

*United States Court of Appeals
for the Second Circuit*



APPENDIX

75-2078

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United States Court of Appeals

For the Second Circuit.

UNITED STATES, *ex rel.* STEPHEN P. SAPIENZA,
Petitioner, on behalf of ALFRED A. ARGENTINE,
Relator-Appellant,

against

LEON J. VINCENT, Warden, Green Haven Correctional
Facility,
Respondent-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF NEW YORK.

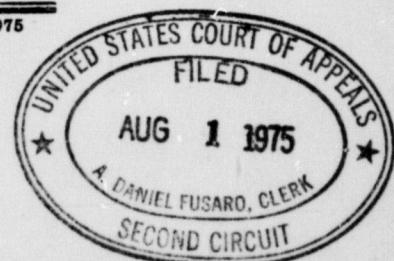
APPENDIX.

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THE REPORTER COMPANY, INC., New York, N. Y. 10007—212 752-6978—1975

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PAGINATION AS IN ORIGINAL COPY

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UNITED STATES COURT OF APPEALS,
FOR THE SECOND CIRCUIT.

-----X

UNITED STATES ex rel. STEPHEN P. SAPIENZA, Petitioner,
on behalf of Alfred A. Argentine,

Relator-Appellant,

against

LEON J. VINCENT, Warden, Green Haven Correctional
Facility,

Respondent-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK.

-----X

DOCKET ENTRIES.

STEPHEN P. SAPTEMA, as attorney for ALFRED A.
vs. LEON J. VINCENT, Warden, etc.

DATE	FILINGS- PROCEEDINGS	AMOUNT REPORTED IN EXHIBIT RETURNS
5-74	PETITION FILED FOR A WRIT OF HABEAS CORPUS.	1
6-74	BY JUDD, J. ORDER TO SHOW CAUSE FILED (1) The Atty., Gen., State of N.Y., to show cause before this Court by the filing of a return to the petition, why a writ of habeas corpus should not be issued, etc. (See Order)	2
6-74	Copy of letter of Clerk of Court filed dated Feb. 6, 1974 addressed to relator herein re enclosure of a copy of order, etc.	3
	cc: to Atty., Gen., State of N.Y., etc.	
3-11-74	Affidavit of A. Seth Greenwald, Assistant Atty., Gen., State of N.Y., filed in opposition, etc.	4
3-29-74	Before JUDD, J. Case called. Both sides present. Motion argued. Adjourned to April 19, 1974 for further argument.	
4-19-74	Before JUDD, J. Case called. No Appearances. Marked submitted. DECISION RESERVED.	
4-25-74	AMENDED PETITION FILED.	5
5-6-74	Affidavit of A. Seth Greenwald, Assistant Atty., Gen., State of N.Y., filed in opposition.	6
5-14-74	Motion filed to strike respondent's motion to Dismiss and Answer	7
5-14-74	Before JUDD, J. Case called. Attorneys for both parties present.	
	4 37 page document marked Court's Ex. 1 - ADJOURNED WITHOUT DATE FOR SUBMISSION OF PAPERS.	
5-28-74	SUPPLEMENTAL AFFIDAVIT OF A. Seth GREENWALD, Assistant Atty	8
	GEN., STATE OF N.Y. filed.	
6-4-74	Application for Bail pending Final Disposition of Writ of Habeas Corpus filed.	9

DOCKET ENTRIES

	<u>BY JUDD, J. ORDER ENDORSED UPON THE BACK OF APPLICATION, ETC.</u>	
	<u>MOTION DENIED. SO ORDERED. (See order dated July 26, 1972) on</u>	
	<u>Document #9.</u>	
7/29/74	<u>Affidavit in opposition of A. Seth Greenwald filed.</u>	10
12/74	<u>By JUDD, J. - Order dated Sept. 11, 1974 filed that Stephen P. Sapienza is relieved as atty and that Bernard Jay Coven is to be substituted as atty for Alfred A. Argentine.</u>	11
2-17-74	<u>Affidavit of Gene Baron filed (dated October -- 1974)</u>	12
2-17-74	<u>Affidavit of Stephen P. Sapienza, Esq., filed.</u>	13
2-17-74	<u>Affidavit of Gene Barron filed. (dated Nov. 6, 1974)</u>	14
-13-75	<u>Copy of letter of BURTON C. AGATA, ESQ., dated Feb. 11, 1975 addressed to FISHLER, CH. J. permitting him to appear herein, etc. pro hac vice, etc.</u>	15

SHEET 12

74-C-193 STEPHEN P. SAPIENZA, an Attorney for ALFRED A. ARGENTINE vs. LEON J. VINCENT, Norden, etc.

CIVIL DOCKET

DATE	FILINGS—PROCEEDINGS	COURT FEES	AMOUNT DETERMINED IN THE COURTS THEREIN
		REGULAR	EXTRAORDINARY
1-8-75	<u>SECOND AMENDED PETITION FILED. (Relator)</u>		16
7-75	<u>BY JUDD, J. ORDER FILED. ORDERED that the petition be DISMISSED. (See Order dated 4-4-75)</u>		17
10-75	<u>JUDGMENT FILED. ORDERED that the relator take nothing of the respondent and that the petition is DISMISSED.</u>		18
-29-75	<u>NOTICE OF APPEAL FILED (from order of April 4, 1975) Re: Alfred A. Argentine</u>		19
-29-75	<u>Copy of Notice of Appeal was on this day mailed to Clerk, U.S.C.A. (Ex parte)</u>		
-29-75	<u>Copy of Notice of Appeal was on this day mailed to Atty., Gen., State of N.Y., etc. (Ex parte)</u>		
5-1-75	<u>Instructions re preparation of Record, etc., together with forms C & D were on this day mailed to Richard J. Reisch, Esq., c/o Reisch, Klar & Kane, P.C., 1501 Franklin Ave., N.Y., 11501, etc. (Ex parte)</u>		
5-6-75	<u>APPLICATION FILED FOR A CERTIFICATE OF PROBABLE CAUSE.</u>		20
5-6-75	<u>CERTIFICATE OF PROBABLE CAUSE FILED (dated May 5, 1975)</u>		21

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AMENDED PETITION.

OFFICE
U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

APR 25 1974

TIME AM
PM

UNITED STATES OF AMERICA,
EX REL STEPHEN P. SAPIENZA,
Petitioner on behalf of
ALFRED A. ARGENTINE,

Relator

Civil Docket No. 74 C 193

Against

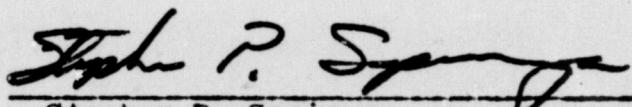
AMENDED PETITION

LEON J. VINCENT, Warden
Green Haven Correctional
Facility,

Respondent

Petitioner submits the attached copy captioned Amended Petition on behalf of Alfred A. Argentine, Relator herein, as a matter of course and/or pursuant to an oral order of this Court granting leave to amend under the provisions of Rule 15.

Signed:



Stephen P. Sapienza,
Attorney for Relator

Address:

715 Teaneck Road
Teaneck, New Jersey 07666

AMENDED PETITION

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
EX REL STEPHEN P. SAPIENZA,
Petitioner on behalf of
ALFRED A. ARGENTINE,

Petitioner

Against

Civil Docket No. 74 C 193

LEON J. VINCENT, Warden
Green Haven Correctional
Facility,

AMENDED PETITION

Respondent

APR 26 1974

TO THE HONORABLE UNITED STATES DISTRICT COURT FOR THE EASTERN
DISTRICT OF NEW YORK:

Your Petitioner, STEPHEN P. SAPIENZA, ESQ., as and for
his Amended Petition respectfully shows:

1. Petitioner is an Attorney at Law duly licensed to
practice in the State of New York and by consent of the Honorable
Judge Jacob Mishler, Chief Justice, has been granted permission to
appear in this action.

2. Petitioner, as Attorney for ALFRED A. ARGENTINE,
makes application herein on behalf of ALFRED A. ARGENTINE, for a
Writ of Habeas Corpus by reason of the fact that he is unlawfully
detained and restrained of his liberties by the Respondent, LEON
J. VINCENT, the Warden of Green Haven Correctional Facility at

AMENDED PETITION

Stormville, New York by virtue of a judgment of conviction pronounced upon him by the County Court of the County of Nassau, on January 28, 1964 and by order of resentence dated September 25, 1964 upon conviction of the crimes of forgery in the second degree (two counts) and grand larceny.

3. That Relator, ALFRED A. ARGENTINE, has exhausted all state remedies as required by 28 U.S.C. Section 2254. The steps taken by Relator to exhaust the state remedies were as follows:

A. Direct Appeal: Relator perfected his notice of Appeal to the Supreme Court Appellate Division Second Department on March 18, 1964. Although the Relator successfully moved to proceed as a poor person and received waiver of the requirement that his brief be printed, said appeal was dismissed on the court's own motion on October 3, 1966 for failure to prosecute. This failure to prosecute was caused by numerous delays which the Relator met in attempting to correct alleged errors in the trial record and to secure a complete and accurate copy of the same.

Thereafter, Defendant did apply for leave to appeal to the Court of Appeals from the dismissal of his appeal. Said request was denied by the Court of Appeals on October 16, 1967 by the Honorable Judge Fuld.

On information and belief this appeal was based on the following errors: the right to counsel of his own choosing, compulsory process of witnesses, and the denial of the right to proceed pro se.

AMENDED PETITION

B. Subsequently Relator moved for a Writ of Error Coram Nobis claiming he was denied the right to counsel of his own choosing and the right to compulsory process of witnesses. This writ was heard by Judge Kelly and on December 31, 1969 was denied without a hearing.

Thereafter on October 9, 1970 the Appellate Division Second Department reversed the decision of Judge Kelly and remanded said Petition to the County Court for a hearing on the issues alleged.

Said hearing was held before the Honorable Judge David T. Gibbons, County Court, Nassau County and after a full hearing said motion was denied on July 21, 1971. No further appeal was taken by the Defendant.

C. An Application for a Writ of Error Coram Nobis was heard by the Honorable Judge Frank X. Altimari on the issues of perjury by the state's witness, subornation of said perjury by the District Attorney's Office, and refusal of the Court to subpoena witnesses. On October 10, 1973 the honorable Judge Frank X. Altimari denied said Petition in all respects. Defendant moved to reargue and after reargument, said decision was affirmed in all respects on November 16, 1973. Thereafter Relator applied to the Appellate Division Second Department for leave to appeal the decision of Judge Frank X. Altimari.

AMENDED PETITION

Whereupon the Honorable J. Irwin Schapiro, Associate Justice, Appellate Division, Supreme Court, Second Judicial Department did issue an order dated January 31, 1974 denying leave to appeal to said court. No further appeal is permitted under New York's Criminal Procedure Law.

D. The Relator petitioned for a Writ of Habeas Corpus on June 9, 1969 and hearings were held before the Honorable Judge John S. Conable in Wyoming County. The issues presented at said hearings included perjury of testimony by a state witness, prejudicial pre-trial publicity, the right to pro se, compulsory process of witnesses, and denial of a change of venue. Said hearings were completed on or about the 13th day of April, 1970, the Judge reserving decision. Since that time no decision has been forthcoming and the Defendant asserts that because of the time delay as well as a loss of his trial record, he has exhausted this remedy.

4. That Relator is restrained and imprisoned pursuant to an illegal and void sentence obtained in violation of his constitutionally guaranteed rights including but not limited to his right to be fully informed of his own rights, his right to examine the state's witness prior to trial, his right to his right to have counsel of his own choosing, and the circumstances under which the above-mentioned violated guarantees are as follows:

AMENDED PETITION

A. DENIAL OF COMPULSORY PROCESS OF WITNESSES

On January 28, 1964 the Defendant, Relator herein, read into the trial record a written request (dated January 28, 1964) which was entered as Court Exhibit D (annexed hereto and marked Exhibit A) requesting that a Mr. Bert Solomkin, a Mr. Robert Brunner, a Miss Milo and others not appearing in the written motion attached hereto be subpoenaed to testify on behalf of the Defendant.

Although Relator made this request, over the objection of his appointed counsel, the court should not have denied him the right to call witnesses in his defense.

It is our contention that these witnesses would have been able to rebut the testimony given by and affected the credibility of Lewis Horton, Nancy Romandette and Jeffrey Wartenberg.

Set forth below are specific instances of testimony given by the above mentioned Lewis Horton, Nancy Romandette and Jeffrey Wartenberg. These statements are followed by the Public Defender's investigator's report of what Miss Milo, Mr. Martin Dreiwitz and others could have testified to.

1. Lewis Horton testified that he had no business relationship with the Defendant, Relator herein, and that the only reason he introduced Miss Milo to Alfred A. Argentine was "because she was an attractive blond". (Pages 299-302 Record of

AMENDED PETITION

Transcript dated January 27, 1964, Horton - direct, page 20.

This testimony is well known to the defense, that is, that Horton denying any business relationship with the Relator, would have been rebutted by and/or made less credible, had this man called to testify on behalf of the petitioner.

See memorandum of L. Hall dated January 27, 1964, and attached hereto which Exhibit 3, sworn to state that "Lou Mille (a/k/a Mary Ann Miliaccio) "admits that Lou Horton called to prepare the way for Argentine's coming to court in regard to making book." And that she further stated "Horton had a collision shop somewhere in Lindenhurst and that Argentine used to hang out there and she was aware that Horton and he did business together."

Your Petitioner asserts that in light of the foregoing statement, the denial of Relator's constitutional right to call this witness severely jeopardized his defense.

2. Nancy Romandette testified that Alfred A. Argentine, Relator herein, told her Bert Solomkin was going on the trip to Florida with them. (Pages 216-217 Record of Trial; dated January 23, 1964; Romandette-direct). The Defendant, Relator herein, requested the court to permit the calling of a Mr. Bert Solomkin on his behalf. It was believed at that time, as it is now, that his testimony would have directly contradicted that of Nancy Romandette and that together with the testimony of a Mr. Robert Brunner the credibility of this witness would have been seriously damaged if not totally disbelieved.

AMENDED PETITION

3. Jeffrey Wartenberg testified as follows:

"Answer: I questioned the check when I got it with the manager of the Hershey Travel Agency.

Question: Who is he?

Answer: Martin Dreiwitz. I questioned it because an auto-body check--if you have any experience handling checks, body shops and builders, contractors usually should be checked. And he said, 'Well, as long as it is a local check, it is our policy to pass on it and, without identification,' which I did."

(Page 128 Record of Trial; dated: January 21, 1964; Wartenberg-direct; beginning on line 1 to line 9).

And on cross-examination Wartenberg again stated:

"Question: Well, before you ask anybody, did you ask this Defendant or his companion for any sort of identification at all?

Answer: No I did not.

Question: And then you went to some superior and on that basis you accepted this check?

Answer: That's correct."

(Page 151 Record of Trial; dated: January 21, 1964; Wartenberg-cross-examination; line 11 to line 17).

This testimony should be compared with the statement given to the Public Defender's investigator, Mr. L. Rodau, (Exhibit B under No. 1 Martin Dreiwitz). Had Mr. Dreiwitz been called to testify as the Defendant requested, it is apparent from this memorandum that he would have said "If it is after hours the clerk is suppose to ask Mr. Dreiwitz for (sic) but in this case Mr. Dreiwitz did not authorize cashing of the check nor is he aware that anyone had authorized the cashing of the check."

AMENDED PETITION

Such a line of testimony by Mr. Dreiwitz would have aided the defense immeasurably inasmuch as Jeffrey Wartenberg was the only person who observed the alleged "uttering" of the check.

The above-mentioned witnesses are but typical of those that could have been called had the Defendant's request to subpoena said witnesses been granted.

The right of the Defendant to have compulsory process for obtaining witnesses in his favor is guaranteed under the Sixth Amendment. And the fact that Relator's assigned counsel objected to these witnesses does not constitute a waiver of Defendant's constitutional right.

On information and belief this issue was raised on the Relator's direct appeal which was dismissed because of failure to prosecute. An application for leave to appeal to the Court of Appeals from said dismissal was denied.

This issue was also presented to the Honorable Frank X. Altimari in the Relator's Petition for Writ of Error Coram Nobis. Said Writ was denied without the court ever considering the issue of compulsory process to call witnesses. The Honorable Judge Frank X. Altimari stated that this issue was not one reviewable in a Writ of Error Coram Nobis but should have been part of the direct appeal (See Exhibit D).

AMENDED PETITION

Your Petitioner asserts that said issue is a proper subject of a evidentiary hearing by this court and that the error complained of is of such constitutional properties as to mandate a new trial.

B. DENIAL OF THE RIGHT TO CONFRONT WITNESSES
AGAINST THE DEFENDANT

Petitioner asserts that the Defendant was effectively denied the right to confront the state's complaining witness, Lewis Horton, for the following reasons:

1. Lewis H. Lippens presented himself before the Grand Jury as well as before Judge Kelly and the 12 jurors that sat in judgment of the Relator herein under the guise and alias of Lewis Horton.

2. Use of this name whether or not it is believed to have been intentional or accidental results in the Defendant being unable to discover and use information such as that contained in the attached birth certificate and record of conviction of said witness to attack the credibility of this witness and rebut his testimony. (Exhibit Y)

The use of the alias Lewis Horton by the state's complaining witness although not a complete denial of the Defendant's right to cross-examine the witness was an invasion in Defendant discovering the witness' record of conviction which could not be

AMENDED PETITION

circumvented and therefore he was unable to expose Lewis H. Lippens' perjury as to previous convictions and bring out the truth. (See below (C) Perjured Testimony)

To initiate and carry out cross-examination without the witness' true identity being known is to effectively destroy the very purpose of cross-examination.

This issue was raised in Relator's Writ of Error Coram Nobis before the Honorable Frank X. Altomari and was denied on the basis that further proof of other convictions was not such a denial of Defendant's right that it required a new trial or reversal.

C. PERJURED TESTIMONY

The perjury on the part of Lewis H. Lippins a/k/a Lewis Horton was as follows:

Question: Now, you told Mr. Merchese that you had been arrested several times. I believe you stated in connection with motor vehicle traffic violations?

Answer: That is correct.

Question: And also for bad checks?

Answer: No!
(Page 93-94 Record of Trial; dated January 20, 1964; Horton-cross).

Said witness did also further testify later on page 94:

Answer: Was I convicted of a crime? No. I usually made restitution and then they would forget about it."

AMENDED PETITION

And the complainant or his attorney, Mr. John J. Hinde, dated January 20, 1964 said witness affidavit of the defendant.

Answer: Yes, was I ever convicted of more than one occasion. Yes, two.

Question: Two occasions?

Answer: Yes, using the name Lewis Horton or Lou's Auto Body which is my signature on Lou Horton.

Question: Right, and I think you said, as Mr. Archesse was talking, that you made restitution.

Answer: Yes, I cleared the matter up before it went to court or in the courtroom itself before there was any crime or anything.

Question: And the complaint was withdrawn?

Answer: Of course."

The above is only representative of a long line of direct and cross-examination in which the complainant witness did perjure himself and attempt to falsify his earlier arrest conviction.

This perjury although not bearing directly on the issue of the guilt or innocence of the Relator affects the general credibility of the state's complainant witness and was a matter which the jury should have and was entitled to consider when evaluating his testimony.

Your Petitioner respectfully requests that this Court bear in mind the facts brought out under subheading (A) Denial of Compulsory Process of Witnesses wherein your Petitioner

AMENDED PETITION

shows how Defendant was further injured by not being permitted to present the testimony of Miss Kile to refute other statements made by this witness.

These false statements were knowingly permitted to stand even though the state through the Office of District Attorney had or should have had this witness' true name as well as his arrest record inasmuch as the District Attorney's Office prosecuted several of these indictments.

Petitioner claims that this issue has been properly brought before this court and that the Relator has exhausted his state remedies by a Writ of Error Coram nobis brought before the Honorable Frank X. Altisenti, Nassau County Judge, who denied the relief requested based on the fact that (1) the Petitioner, Relator herein, had not acted promptly when he finally discovered the perjured testimony and (2) the fact that although the complaining witness had not stated all the crimes of which he was convicted and all the alleged under which he acted, the crimes not revealed were insufficient for a reversal of the conviction.

It is your Petitioner's contention that this decision disregards the fact that it is not the job of the court to determine the relative weight to be given to the evidence which was held back from the jury by the witness. It is further asserted that the Honorable Judge Frank X. Altisenti did, in his

AMENDED PETITION

conclusion as to what the facts substantiated ("It was merely a single conviction more than 10 years old that was suppressed from the knowledge of the jury".) (Exhibit D), erroneously stated the truth. See the attached Record of conviction of Lewis Horton (Exhibit E).

D. THE DEFENDANT WAS DENIED HIS SIXTH AMENDMENT RIGHT TO COUNSEL AND THE PLEMIBRA OF THAT RIGHT

The Relator herein, Alfred A. Argentine, was indicted by the Grand Jury of Nassau County on October 1, 1963. On October 7, 1963 before the Honorable Judge Oppido in Nassau County the Public Defender (Legal Aid) who was assigned to represent the Defendant entered a plea of not guilty on the Defendant's behalf.

On October 29, 1963 Mr. James McDonough visited the Defendant for the first time. Although complaining of a beating suffered at the hands of prison officials Mr. McDonough was unmoved and after a brief interview left after being told by the Defendant he didn't want his services.

That very afternoon (October 29) Mr. McDonough asks Judge Oppido for an order directing a psychiatric examination of the Defendant (Pages 6-8 of trial record).

Subsequent to this date, no further action was taken on the part of Mr. McDonough until December 14, 1963, when he

AMENDED PETITION

appeared at the jail to complain of Defendant's act in having Mr. Kutner, Esq. make application for bail two days earlier.

Mr. McDonough also advised the Defendant that he should take a plea inasmuch as several indictments were pending and any one of them would carry with it substantial jail time.

All of this was done without any preliminary investigation or research into the case. (Exhibit B Investigator's report shows this information was not received until at least January 27, 1964).

The next date of importance in this indictment was January 4, 1964 when Mr. McDonough visited the Defendant for the third time to inquire as to whether a Mr. Winters, Esq. had been retained, the Defendant answering in the affirmative.

Then on January 6, 1964 before Judge Paul Kelly, County Court, Mr. McDonough moved for an adjournment on behalf of Mr. Winters who he (Mr. McDonough) had spoken to and who was retained by the Defendant.

Although it is not Petitioner's contention that these acts, or inaction as the case may be, are tantamount to ineffective counsel, they are set forth to provide a frame of reference as to Defendant's reasons for mistrust and desire for counsel of his own choice.

Judge Kelly who had had no previous requests for an adjournment or for change of counsel denied the motion on the basis of another judge's story of his experience with the Defendant.

AMENDED PETITION

Mr. McDonough then requested that he be relieved from this assignment. This was denied. The Defendant then requested the judge to disqualify himself and this too was denied.

On January 7, 1964 because of pretrial publicity, Judge Kelly on the motion of the Defendant declares a mistrial.

During the proceedings of January 7, Mr. McDonough made an oral request for change of venue but unfortunately never followed through with a written request.

For approximately the next 10 days the newspapers (Exhibit F) and radio and news broadcasts carried stories of your Relator's plight.

On January 20, 1964, a new trial resumed before Judge Paul Kelly. Mr. James McDonough was still counsel and again a written request was read into the record to permit the Defendant (Exhibit G) to secure counsel of his own choice, and for dismissal of Mr. James McDonough. The latter request being supported by Mr. McDonough.

The court again denied these motions on the basis of what had been said by Judge Goldstein concerning another separate and distinct indictment (Pages 36-38 of Trial Record).

Through the balance of this trial the Defendant was to make numerous motions relating to a stay to permit Defendant to appeal the court's denial of a motion for change of venue and re-

AMENDED PETITION

quests that the judge disqualify himself, complaints of abuses by prison officials and a request to have certain witnesses appear in his behalf. (Exhibits A and H).

When the last of these motions regarding defense witnesses was read in open court, Mr. McDonough erred and requested and after the court denied it, the Defendant requested that he be permitted to proceed pro se and Mr. McDonough requested to be relieved of his assignment. All of which were denied.

Your Petitioner contends that the above facts support the conclusion that:

1. DEFENDANT WAS DENIED THE RIGHT TO COUNSEL
BY THE COURT.

as set out and as Prof. Reiter in defense Defendant's application and that Mr. McDonough to permit no adjournment inasmuch as Mr. Reiter was not ready for trial and had just recently been retained, a violation of Reiter's right to counsel of his choice.

Upon trial, the defense of defendant had not requested or received one adjournment and in view of this indictment (#19147) is concerned only with the matter of trial, that is, inasmuch as the court had appeared (Mr. Goldstein, Esq.) defendant was a limited appearance for the purpose of trial only.

Without adducing the documents of Judge Oppido's and Judge Goldstein's affidavit, it is alleged to mislead the court Petitioner states that there were other documents pending at

AMENDED PETITION

the time of this indictment had no contact but consulted with a few attorneys and two were discharged.

But, the facts and events just narrated in these cases should not have been used by Judge Kelly as a criterion for denying the requested adjournment. And, his statement to the effect that this was the second time this case was delayed is not only untrue but suggests the undue influence that Judge Goldstein's conversation had had on him.

2. DEF. TAKS OF EFFICIENT AND FAIR ADVICE.
COMPLAINT.

The assignment of defense attorney, Mr. Duncum, to my counsel was filled with problems.

The Plaintiff felt that attorney Duncum compensated a loss of the right to select his attorney, but he had confidence in and after the events described above took place, (i.e. failure to call witnesses, failure to file objections to venue, failure to file Defendant's claims of novelty, failure to file a motion for a continuance, failure to file a motion for a mistrial, etc.) it must be admitted that his opinion was not without reason.

Although counsel seemed to be unable to frequent office, disagreements and altercations with Plaintiff (the defense) concerning the trial, the defense attorney (Plaintiff's attorney) would be requested not to file.

AMENDED PETITION

Representation by Mr. Joseph L. Rauh, Jr., is not up to standards. Inefficive, he was uninterested and negligent. He desired, uninformed as to the importance of the names of the estimated witnesses and failed to demand that the names be disclosed. In charge of venue.

These will be the main points of my argument. I am not sure and although I have done my best, I am not sure that I am not subject to some reservation.

Admittedly, the defense attorney is not to be blamed for this lack of representation. In my opinion, at the one, he was handed that only the name of the defense attorney, the other, of which were vehemently opposed to the defense.

It is therefore somewhat difficult to determine the innocent victim of this relationship but in the end, it was the Defendant, ALFRED A. ARMENTO, who was punished and suffered for these violations of his constitutional rights.

IV. CONCLUSION

Alfred A. Armento, after choosing an attorney of his own choice and who said, "I am here to fight" (quote from decision of Judge Paul L. Kelly, Plaintiff) requested his constitutionally guaranteed right to an attorney.

He did not want to be represented by an attorney who he didn't have confidence in, as represented by Paul Kelly to permit him to proceed with the defense which he did.

AMENDED PETITION

That in view of the fact that Mr. Tolson or Mr. Felt, was not going to introduce any witnesses, i.e., witnesses to the teleter once again advised his client to make a request to the court to be able to call witnesses to testify in his behalf, and the Plaintiff denied his request. There is no evidence to show that these two requests were intended to impede the right and in fact, neither would have caused any delay.

Therefore, the plaintiff is hereby compelled to accuse of all of the foregoing, Mr. Tolson, Mr. Felt, and Mr. Tamm, who denied every request of the defense to call any witnesses.

However, the following objection is now being presented in the direct appeal and the defense is asking you to rule before the Honorable Judge that it is well founded.

In this instant, it is submitted that the said decision above-mentioned decision is based on all the information that was pending against the Defendant and not only right. It is therefore filled with such prejudicial statements as would cause the court to set the indictments out it should not be permitted to have a decision on the facts of this case.

Very respectfully yours, WALTER J. BROWN, JR.

Your Petitioner,
That the statements made by the Plaintiff, and
and omissions on the part of the Plaintiff, and his attorney,
were of such a magnitude as to set aside the entire trial and
proceeds.

AMENDED PETITION

Judge Paul Kelly, in his capacity as a trial judge, in a trial in which he is the presiding judge, violated his duty under Section 34 of the Trial Practice Act, which is a statute which is promptly followed and followed in every trial, Article 28 of the U.S.C.

Judge Paul Kelly violated his duty as a trial judge, as a trial judge, two years earlier (Case No. 100-1844, dated 10-10-64), it is alleged that the defendant, in the course of the trial, New York Bar Association and in the three hours prior to the trial, he said he was making the appeal to the court to let him go, and Judge Paul Kelly did not allow the defense to have their attorney, their client-attorney, to participate in the trial.

The defendant, in his trial, to his attorney, he said, "I think his disqualification is considered, but I do not do that, and a denial of a fair trial is a violation of the right to due process Fourteenth Amendment.

Furthermore, Judge Paul Kelly violated his duty, as a trial judge, cross-examination (Page 305 Line 124-131, witness number 1-27-64) of Lewis Norton and the defense attorney, he said, "He right. He knew nothing about any questions about bookmaking or in connection with Mr. Argentine or the attractive blonde or anyone else," denied Defendant the right to cross-examination and because of his position as judge reinforced and

AMENDED PETITION

created a presumption in the minds of the jury that what Lewis Horton had just testified to was the truth.*

This conduct not only was an error of what the judge's role is but infringed on the Defendant's right to cross-examine a witness in violation of the Sixth Amendment.

WHEREFORE the Petitioner prays this Court to issue its Writ of Habeas Corpus addressed to

, Sheriff of County, State of New York, directing him to have the Relator herein, ALFREDO A. ARGENTINE, returned to this jurisdiction and brought before this Court forthwith and that at that time the Relator herein be discharged from further custody. The Petitioner further prays that all proceedings in the County Court of Wyoming, State of New York, be stayed pending the hearing and determination of this Petition. The Petitioner further asks the Court to admit the Relator herein to bail pending the hearing on this Petition and that the Court fix the amount of such bail, and that on furnishing bail to the Clerk of this Court that

*But in fact, as is shown by Exhibit B under file this was not the truth.

AMENDED PETITION

the Relator herein, ALFRED A. ARGENTINE, be released until final determination of this cause.

Stephen P. Sartenza
STEPHEN P. SARTENZA, ESQ.

Dated: Teaneck, New Jersey
April 25, 1974

STATE OF NEW JERSEY }
COUNTY OF BERGEN } SS:

STEPHEN P. SARTENZA, ESQ., being duly sworn, deposes and says, that he is the Petitioner of the foregoing Amended Petition for Writ of Habeas Corpus; that he has read the foregoing Amended Petition and knows the contents thereof; that the same is true to the knowledge of the deponent, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

Stephen P. Sartenza

Sworn to before me this
day of April, 1974.

Lucille Zaneth

NOTARY PUBLIC OF NEW JERSEY
My Commission Expires July 19, 1976

EXHIBIT A, ANNEXED TO AMENDED PETITION.

With the Honorable Courts permission, I the defendant, respectfully pray to the Honorable Court to grant my request to have this motion read into the Court Record and for it to be made part of the Record.

YOUR Honor.

I would ^{very} respectfully inform the Court and bring to your Honor's attention the fact, that on the afternoon of the 23rd day of January 1964, two Detectives of the Nassau County Police Dept. visited a man named Bert Solomkin, at the Nassau County Jail, East Meadow, N.Y. Their purpose for this visit with Mr Solomkin, was ~~to~~ for Mr Solomkin to appear before this Court as a witness against me in this trial. Mr Solomkin is the man "Bert" that one of the State witnesses mentioned in her testimony on the stand before this Court.

Mr McDonough was informed by me, when he came to the jail on Friday morning that Mr Solomkin could be used as a witness in my behalf. I requested that Mr Solomkin, be subpoenaed as a witness on behalf of myself the defendant, so to prove that the State witness did not testify to the truth about a Mr R Brunner, the man whose name appeared on the Air Line ticket, and I also ~~had~~ Mr McDonough to subpoena a Mr Robert Brunner of Babylon L.I., Mr McDonough refused to do so.

EXHIBIT A, ANNEXED TO AMENDED PETITION

I ALSO ASKED THE PUBLIC DEFENDER TO SUCCEDEA
A WOMEN KNOWN TO ME AS Miss Milo, OF 1006
TOOKER AVE, BABYLON, AS HER TESTIMONY IS IMPORTANT
TO MY DEFENSE. THIS MR McDONOUGH DID, AS HE SHOWED
ME A STATEMENT THAT Miss Milo, GAVE TO THE INVEST-
IGATOR FROM THE PUBLIC DEFENDERS OFFICE. THIS
STATEMENT REFUTES THE TESTIMONY MR HORTON MADE
IN THIS COURT; ALSO I KNOW IF SHE IS QUESTIONED
CONCERNING MRS ROMANETTE, A GREAT PART OF
①

I WOULD LIKE AT THIS TIME TO BRING TO YOUR HONOR'S
ATTENTION THE FACT THAT MRS ROMANETTE HAS ALREADY
GIVEN SWORN TESTIMONY IN THIS COURT, THAT IS
CONTRIDICTORY TO THE TESTIMONY SHE GAVE IN HER
STATEMENT (PAGES 13 AND 15)

YOUR HONOR, I HUMBLY BRING TO THIS COURT'S,
ATTENTION THE WAY MR McDONOUGH, WAS SO INSISTENT ON
HAVING MR HORTON, RECALLED TO BE QUESTIONED FURTHER,
MR McDONOUGH WAS NOT CAPABLE OF QUESTIONING MR
HORTON PROPERLY, WHEN HE WAS RECALLED, BECAUSE
OF THE SOLE FACT THAT HE DOES NOT HAVE ALL THE
FACTS CONCERNING MY ASSOCIATION WITH MR HORTON.

MR McDONOUGH HAS BEEN TAKEN BEYOND ANY
HUMAN ENDURANCE - DUE TO THE FACT THAT HE HAS
BEEN FORCED TO REPRESENT ME - BY THIS COURT,
AND ALSO BECAUSE I DO NOT WISH TO HAVE MR
McDONOUGH REPRESENT ME AND VICE VERSA; AS THE COURT
RECORDS WILL STATE THAT MR McDONOUGH HAS MADE
NUMEROUS REQUESTS TO BE RELIEVED.

EXHIBIT A, ANNEXED TO AMENDED PETITION

YOUR HONOR, I SWEAR ON THE BIBLE THAT I AM NOT TRYING TO USE EXCUSES TO DELAY MY TRIAL, I HAVE BEEN INCARCERATED NOW 170 DAYS - [REDACTED] ALL I AM BEGGING THIS COURT FOR, IS A FAIR AND IMPECCABLE TRIAL - THE RIGHT TO DEFEND MYSELF; OR TO OBTAIN COUNSEL OF MY OWN CHOOSING - OR AT LEAST TO BE GRANTED THE RIGHT TO HAVE THE WITNESSES, THAT I FEEL AND KNOW ARE VITAL TO MY DEFENSE, SUPERINDED - AND TO HAVE THEM PROPERLY QUESTIONED, SO AS TO BRING OUT THE TRUTH, AND NOT LIES.

YOUR HONOR, IN YOUR SENSE OF JUDGEMENT DUE TO MY ACTIONS, AND THE WAY I HAVE BEEN AGGRESSIVELY MAKING REQUEST'S TO THIS COURTS CONCERNING MY CONSTITUTIONAL RIGHTS; I MIGHT HAVE GIVEN YOUR HONOR, THE IMPRESSION THAT I AM BEING OBNOXIOUS, A SMART GUY AND THAT I AM DISRESPECTFUL TO THE COURTS - OR THAT ALL I AM DOING IS TO TRY AND DELAY MY BEING BROUGHT TO TRIAL.

(7) [REDACTED] ~~IN MY INTENTIONS, NOR~~
HAS THIS EVER BEEN MY ULTERIOR MOTIVE.

DUE TO MY PAST EXPERIENCES AND CIRCUMSTANCES AND ALSO MY PRESENT ONES, I HAVE ALWAYS KNOWN YOUR HONOR, TO BE A STERN BUT FAIR JUDGE, AND THEREFORE YOUR HONOR, ALTHOUGH YOU ARE UNDOUBTEDLY FAMILAR WITH MOST OF THE INCIDENTS THAT HAVE HAPPENED TO ME SINCE MY INCARCERATION

EXHIBIT A, ANNEXED TO AMENDED PETITION

WAITING TRIAL, OF THE INCIDENTS THAT TOOK PLACE
IN THE JAIL, IN THE SUPREME COURT AND ALSO
COUNTY AND DISTRICT COURT - I AM NOW APPEALING
TO YOUR HONOR AGAIN, TO PLEASE GRANT ME
THE RIGHT, TO HAVE THE WITNESSES SWORN,
WHO ARE VITAL TO MY DEFENSE - IN PROVING
MY INNOCENCE - AND TO ALLOW ME EITHER TO
REPRESENT MYSELF, OR TO RETAIN COUNSEL, OR
IF THE COURT DOES NOT WISH ME TO DO SO, AT LEAST
GRANT MR. M'DONOUGH A SHORT DELAY, SO HE MAY
BECOME FAMILIAR WITH ALL THE FACTS SO THAT
HE WILL BE ABLE TO PROPERLY QUESTION THE
WITNESSES, AS HE HIMSELF IS UNDER A TERRIBLE
STRESS, ALSO.

FAIRLY SUBMITTED
10th day of JANUARY 1964.

THANKING YOU -
RESPECTFULLY
Alfred O'Donnell
DEFENDANT

EXHIBIT B, ANNEXED TO AMENDED PETITION.

RECEIVED

MEMORANDUM

TO: Mr. McDonough
FROM: L.RodauRe: Argentini - Investigation
of Witnesses Friday and
Saturday Jan. 24 and 25, 1964

1. Martin Dreiwitz.

Manager of the Hershey Travel Agency, Freeport, N.Y. Interviewed on the afternoon of January 24th and stated that he knows nothing at all about this matter. He does not know Argentini either by sight or by name and he never heard the name "Horton" until this incident with the check. The normal procedure on receiving checks is that if it is on a local bank and during banking hours they do not question the client at all but go in the back and quietly call the bank to verify the credit.

If it is after hours the clerk is supposed to ask Mr. Dreiwitz for but in this case Mr. Dreiwitz did not authorize cashing of the check nor is he aware that anyone had authorized the cashing of the check.

They have no standard procedure for looking at automobile licenses or other identification and evidently their rules for cashing checks are very lax. The man who waited on Argentini was Wardenborg. he did not have travel agency experience before and has since left Hershey. Mr. Dreiwitz went on to say that if he shewed any recognition to Argentini, nodded to him, or said "hello" this was merely in his capacity as a salesman. He said that he is a "professional salesman" and part of his job is to greet and be pleasant to prospective clients.

2. Anthony Rossi

I located Napoli Drive in Wyandanch and upon checking same found that it was occupied by only two houses one owned by a colored family and the other by a white family. Neither family knew Rossi. I made inquiries with the local police patrol, neighbors post office, all to no avail. I checked the local school board, Mrs. Sheehan Clerk at the school, checked all the local schools for children of that name with negative results. I then proceeded to Deer Park in the vicinity of Jordans Restaurant and checked out several luncheonettes in the vicinity in an effort to locate Rossi's results were negative.

I discontinued this branch of the investigation.

EXHIBIT B, ANNEXED TO AMENDED PETITION

3. Island Bike Shop.

I found that the correct name for the above is the Suffolk County Hartley - Davidson Motorcycle Co. and that they moved from Sunrise Highway to Route 109 in West Babylon. I interviewed the owner there who gave his name as Gene Barron, phonetic spelling he acknowledged they knew Horton as Horton had done some painting or him on motorcycles. He disclaimed all knowledge of Argentini but did say that he recognized my description of him and his car. The reason he recalled it to mind was that for three days in succession in the summer Argentini came looking for Horton and was very insistent on finding him. No one else in the place knew Argentini.

4. MILO ??

The above named female was given as the Proprietor of a beauty parlor and a possible witness for Argentini. I discovered her true name to be Mary Ann Migliaccio. This subject is living at 1006 Tooker Avenue, West Babylon with her two children. She is separated from her husband and uses the above name which is her maiden name. At first she refused her name and all information in regard to the case we are investigating. However, after considerable discussion with her and her mother I learned that she had been active in Darlene's Hair Stylists at 91 Carlton Ave., Islip Terrace. She had some kind of interest in the business as did her mother. The business had failed about six months ago. The subject styled herself as Manager of the beauty parlor and claims that Argentini never made book on her premises although she admits that Lew Horton called to prepare the way for Argentini's coming to see her in regard to making book. At that time her shop was doing poorly and she might have entertained the idea although she denies she ever entered into any agreement. She went on to state that Horton had a collision shop somewhere in Lidenhurst and that Argentini used to hang out there and she was aware that Horton and he did business together. She would not or could not state that it was bookmaking but she was positive of the fact that they knew each other well. Argentini stated to her that he was doing bookmaking with Lew Horton. Horton never told her in so many words that Argentini was bookmaking at his body shop but he intimated same. She never saw the operation herself. It is my estimation that Lew Horton has either got the Migliaccio family under his thumb because of indebtedness, or fear of him. I subpoenaed Mary Ann Migliaccio along with a fee of \$2. at her home. Subsequently I contacted her that she was to be at our office at 1:30 P.M. this date to discuss the matter. She is afraid of confronting Horton and I understand he is to be on the stand before her.

January 27, 1964.

LH/eb

EXHIBIT D, ANEXED TO AMENDED PETITION

PEOPLE OF THE STATE OF NEW YORK

—against—

ALFRED ARGENTINE

ORIGINAL
NOTION

Defendant

HON. WILLIAM CAHN
District Attorney
Nassau County
Mineola, New YorkALFRED ARGENTINE
Defendant pro se
Box 172
East Meadow, N. Y.

PAPERS NUMBERED

Notice of Motion/Order to Show Cause.....
Supporting Affidavits.....
Answering Affidavits.....
Reply Affidavits.....
Affidavits/Exhibits.....
Filed Papers.....

Briefs: People's Petitioner's..... Defendant's Respondent's.....

The foregoing papers numbered 1 to..... having been read on this motion.....

The defendant, pro se, moves this Court for an Order vacating the judgment of conviction dated March 10, 1964 on the ground that, (1) material evidence adduced at trial resulting in the judgment was false and was, prior to the entry of the judgment, known by the prosecutor to be false (CPL 5440.10(1)(c)); (2) new evidence has been discovered since the entry of judgment which could not have been produced at the trial even with due diligence on his part and which is of such a character as to create a probability that had

EXHIBIT D, ANNEXED TO AMENDED PETITION

such evidence been received at trial the verdict would have been more favorable to the defendant (CPL 5440.10(1)(g)); and (3) the judgment was obtained in violation of the defendant's constitutional right to call witnesses in his own behalf (CPL 5440.10(1)(h)).

The facts alleged in support of grounds (1) and (2) are introduced at trial with regard to the complaining witness's prior criminal record and use of aliases. The trial record reveals that the witness was cross-examined extensively as to his previous criminal record. He admitted several arrests for issuing bad checks (trial transcript p. 94-95), convictions for withholding wages and driving without a license on five occasions (trial transcript p. 98 and 101) and to having spent time in jail (trial transcript p. 96). He also admitted use of the alias "Davis" on checks and credit cards (trial transcript p. 92). The witness failed to mention a then twelve year old misdemeanor conviction and was not asked and did not volunteer his use of the alias "Lippens". Inasmuch as substantial evidence of a prior criminal record and the use of aliases had been introduced at trial, proof of the twelve year old misdemeanor conviction and use of the alias "Lippens" would be merely cumulative and not material or likely to produce a more favorable verdict for petitioner. (People v. Salomi, 309 N.Y. 208, 226; People v. O'Connor, 37 Misc. Rep. 754).

The petitioner has failed to allege facts tending to show that the prosecutor knew or should have known of the prior misdemeanor conviction. This distinguishes the instant case from People v. Fenyides, 1 N.Y. 2d 534, upon which petitioner relies.

EXHIBIT E. ANNEXED TO AMENDED PETITION

The prior misdemeanor conviction and use of the alias "Lippans" were discoverable before trial by the exercise of due diligence. The witness' criminal record shows the conviction as well as various indictments in which his name is listed as "Lippans". Even if unobtainable at trial, petitioner has been in possession of the exhibits now offered in support of his application since at least March 18, 1970 (see issuance dates on the various exhibits). On December 2, 1970, he made a prior motion to vacate and could have ~~then~~ presented this argument. The delay of nearly three years hardly qualifies as the due diligence required by CPL 5440.10(1)(h).

In support of the motion to vacate are without merit (CPL 5440.10 (1)(g) and (1)(h); CPL 5460.30(4)(b)). The substance of ground (3) relates to the failure to subpoena three witnesses at trial. The same events were the basis of two prior motions to vacate made by this petitioner both of which were denied, one after a full hearing. (People v Argentine, Nassau County Court, Dec. 31, 1969 [Kelly, J.] and People v Argentine, Nassau County Court, July 8, 1971). Consequently, this ground is no longer available to petitioner. (CPL 5440.10(3)(b)).

EXHIBIT D, ANNEXED TO AMENDED PETITION

The motion is denied in full.

SO ORDERED.

MUNTER

Dated: October 10, 1973

J. C. C.

PLEASE TAKE NOTICE THAT: The petitioner be and is hereby advised of his right to apply to the Appellate Division, Second Department for a certificate granting leave to appeal from this determination and upon proof of his financial inability to retain counsel and to pay the costs and expenses of the appeal, petitioner may apply to the Appellate Division for the assignment of counsel and for leave to prosecute the appeal as a poor person and to dispense with printing.

Dated: October 10, 1973

J. C. C.

EXHIBIT D, ANNEXED TO AMENDED PETITION

County Judge

THE STATE OF NEW YORK

—against—

ALFRED A. ARGENTINE

*Defendant*HON. WILLIAM CAHN
District Attorney
Nassau County
Mineola, New YorkALFRED A. ARGENTINE
Defendant pro se
Box 172
East Meadow, N. Y.PAPERS NUMBERED

Notice of Motion/Order to Show Cause.....	
Supporting Affidavits.....	
Answering Affidavits.....	
Reply Affidavits.....	
Affidavits/Exhibits.....	
Filed Papers.....	

Briefs: People's Petitioner's..... Defendant's Respondent's.....

The foregoing papers numbered 1 to..... having been read on this motion.....

The defendant, pro se, moves this Court for leave to reargue
Order of this Court dated October 10, 1973 which denied his motion
vacate judgment.

The motion for reargument is granted and, upon such reargu-
ment, the original decision is adhered to.

The defendant contends that, in arriving at the decision on
int 1 of his motion, this Court misunderstood the facts. As evidence

EXHIBIT D, ANNEXED TO AMENDED PETITION

This misunderstanding, he points out that the Court spoke of the witness Norton's failure to disclose his use of the alias "Lippens" were, in fact, "Norton" was an alias and "Lippens" was the witness's legal name. It should suffice to point out that the word "alias" indicates merely that a person bears both names. (People v Mellon, 1 Misc 171; Black's Law Dictionary (4th ed.)). It does not refer to whether or not the name given is the true legal name.

~~THE COURT IS ASKED TO NOTE THAT THE PROSECUTOR KNEW OR SHOULD HAVE KNOWN OF THE~~
witness Norton's use of the alias "Lippens". Moreover, even if the prosecutor did know, that fact would be merely cumulative in light of the testimony that Norton had used the alias "Davis". (See People v Spillane, 309 N.Y. 209; People v Fanning, 300 N.Y. 593; People v Immerling, 235 N.Y.S. 2d 636).

The cases cited by the defendant (People v Witkowski, 13 N.Y. 2d 839; People v Robertson, 12 N.Y. 2d 355) are entirely consistent with the result reached on the initial motion.

The defendant also alleges that Point III of his initial motion was improperly denied. In substance Point III asserted that the trial court erred in refusing to subpoena three witnesses. Based on the papers then before the Court, it concluded that this matter had been raised upon the defendant's direct appeal and was no longer available as the basis for a motion to vacate judgment. (CPL §440.10 (3)(b)). The defendant now contends that this argument was not raised upon the direct appeal.

EXHIBIT D, ANNEXED TO AMENDED PETITION

Sufficient facts appear on the record of the proceedings underlying the judgment to have permitted, upon appeal from such judgment, adequate review of the ground raised. If, as the defendant asserts, no such appellate review or determination occurred, it was the unjustifiable failure to raise such ground upon the appeal which was not perfected by him. Therefore, this ground is not available upon a motion to vacate judgment. (CPL §440.10(2)(c)).

SO ORDERED.

ENTER

tcpt	GRANTED
	November 16, 1973
	HEROLD W. McCONNELL CLERK

FRANK X. ALTIMARI

J. C. C.

EXHIBIT E, ANNEXED TO AMENDED PETITION.

State of California DEPARTMENT OF PUBLIC HEALTH	
This is to certify that this is a true copy of the document filed in this office.	
<p>UNLESS VALIDATED ON THE REVERSE, THIS CERTIFIED COPY IS ISSUED WITHOUT CHARGE FOR LIMITED USE UNDER AUTHORITY OF REG- ULATIONS 9105 OR 9107 OF THE GOVERNMENT CODE.</p> <p>PAUL C. PELLET, M.D. ACTING STATE DIRECTOR OF PUBLIC HEALTH AND REGISTRAR OF VITAL STATISTICS</p> <p>Paul C. Pellet, M.D. REGISTRAR OF VITAL STATISTICS</p> <p>MAY 8 1968</p>	

5 L-152		STATE OF CALIFORNIA DEPARTMENT OF PUBLIC HEALTH VITAL STATISTICS	31-075-101 H.635 2740 1-1-1
1. PLACE OF BIRTH: County of Los Angeles City or Rural Registration District: San Diego Valley Hospital		2. FULL NAME OF CHILD: Lewis G. Lippens	
3. Sex: Male		4. Parents: Father: John Lippens Mother: Unknown	5. Date of Birth: December 22, 1934
6. Father's occupation: Unknown		7. Mother's occupation: Gladys Mitchell Norton	8. Address: 16162 Camarillo St.
9. Residence: Unknown		10. Previous residence: Unknown	11. Telephone number: 477-7000
12. Color or race: white		13. Birthplace: France	14. Birthplace: New York
15. Industry or business in which father was engaged: Sculptor		16. Industry or business in which mother was engaged: Housewife	17. Father's occupation: Free lance
18. Date (month and year) last engaged in this business: Feb. 1952		19. Mother's occupation: At home	20. Total time (month and year) spent in this business: Dec. 1955 3
21. Father's age: 36		22. Mother's age: 36	23. Father's birthplace: France
24. Period of gestation: 40 weeks		25. Month of delivery: Aug	26. Date of delivery: 1970 Aug 20
27. Was a pre-eclampsia or eclampsia present? Yes		28. Delivery reported: Normal	29. Delivery reported: Normal
30. Name of child at birth: (At time of this birth and including this name) Lewis		31. Name of child at birth: (At time of this birth and including this name) Lewis	32. Name of child at birth: (At time of this birth and including this name) Lewis
33. CERTIFICATE OF ATTENDING PHYSICIAN OR MIDWIFE:			
<p>I hereby certify that I attended the birth of this child, who was born alive, 6 lbs. on the date above stated.</p> <p>_____ SIGNED: H. Sprague Physician San Diego Dec. 26, 1970 for Argentine, M.D. for Petitioner</p>			

NAME OF REGISTRANT	DATE OF EVENT
Lippens, Lewis	12-22-34
NAME OF FATHER - NAME OF SPOUSE	TYPE OF EVENT
	B 2.00
MAIDEN NAME OF MOTHER	RECEIPT NUMBER
	21308
PLACE OF OCCURRENCE	DATE OF RECEIPT
	5-7-68 10
REMARKS: B. 2740-1901-17244	

Mr. Alfred A. Argentine, 19875
Box 149
Attica, New York 14011

STATE OF CALIFORNIA
DEPARTMENT OF PUBLIC HEALTH

RECEIPT
DUPLICATE

REV 6-1-60
FORM VS-1281

EXHIBIT E

EXHIBIT E, ANNEXED TO AMENDED PETITION

This certifies that fingerprints of the following named subject have been compared and the following is a true copy of the records of this system.

Robert R. J. Gallati

DIRECTOR

NYSIIS NO. 437649X WM 5 11¹/₂ 1935 -1-

CONTRIBUTORS OF FINGERPRINTS	NAME AND NUMBER	ARRESTED OR RECEIVED	CHARGE	DISPOSITION
PD Los Angeles Calif rep by Wash Bu.)	Lewis Norton #4655 W 8	5-22-51	Susp 487.1 PC (Grand Theft-Merchandise)	
0 Riverhead, NY	Lewis Norton #7774	10-13-52	Pet Larc.	120 das Co Jail
0 PD 105 Pet 16	Lewis Norton Lippens #381626	7-25-56	Gr Larc. (checks)	2-14-57 dismiss
0 Mineola, NY	Lewis Norton Lippens #571170	4-8-58	1-12-4 2-56-4 VIL	1.2 das or \$10 2.20 das or \$100 sent to run con
0 West Meadow, NY	Lewis Norton Lippens #571170	8-4-58	20-4A VIL	8-19-58 90 das and \$200
Mineola, NY	Lewis Norton #28832	4-25-60	Sec. 1292-A PL (fraudulent check)	4-25-60 Nassau Co dismissed

*Represents notations unsupported by fingerprints in our files.

Please advise if we can be of any further assistance to you in this matter.

copied by cp

EXHIBIT E, ANNEXED TO AMENDED PETITION

That the records of the following named subject have been compared and the following is a true copy of the records of this system.

Robert R. J. Gleat

DIRECTOR

NYSHS NO. 437619X AM 5 11 1935 -2-

CONTRIBUTORS OF FINGERPRINTS	NAME AND NUMBER	ARRESTED OR RECEIVED	CHARGE	DISPOSITION
FD Minola, NY	Lewis Norton #20882	6-30-61	Sec. 129-14, 129-15 Property Fraud Sec. Mort. Prop. (2) S/S Restitution & Fraud Chg)	1-1-62
FD East Meadow, NY	Lewis Norton al-Lewis Lippins #571170	10-4-60	1163 VIL (Failed to signal right turn)	10-5-60 3 das or \$15
FD Minola, NY	Lewis Norton al-Lewis Lippins Lewis Norton Lippins #20882	11-27-62	Sec. 1292A PL Fraud Check	11-30-62 PG S/S Restitution
FD Newburgh, NY	Lewis Norton #20882	5-5-64	Fraudulent check	7-30-65 Civil compromise
FD Newburgh, NY	Lewis Norton #20882	6-29-64	Sedomy	9-24-65-Conviction PG as charged, 2 2 1/2 yrs. S
	Lewis Norton al-C. Nolan al-Roger Jones al-Andrew L. Orman #5208	1-21-65	Forgery 2nd-837-2	Same as above

EXHIBIT F, ANNEXED TO AMENDED PETITION.

Case of Poor boy

EXHIBIT G, ANNEXED TO AMENDED PETITION.

At a Trial Term of the COUNTY Court.

held in and for Nassau County, at the Court House, at Mineola, Nassau County, on
20th, 21st, 22nd, 23rd, 27th & 28th day of January 1964.

Present, Hon. PAUL KELLY, County Judge of Nassau County.

Indictment No. 19147

THE PEOPLE OF THE STATE OF NEW YORK

FOR THE
the People

Charles Marchese
Ass't. District Attorney

AGAINST

ALFRED A. ARGENTINI

James J. McDonough
Public Defender

FOR DEF'T

Defendant informed pursuant to Section 250 of the Code of Criminal Procedure.

This cause having been called in its regular order on the Calendar, on motion of Charles Marchese, Assistant District Attorney for the People

Ordered that a jury be called and this cause tried.

Jury duly drawn, called and sworn, or affirmed, and cause tried.

The Jury retires in charge of a sworn officer, and subsequently they came into Court and informed, x-ray that they did find a verdict in favor of the

January 20th, 1964, Mr. McDonough moved that prospective Jurors be directed to leave Court room as he had Motion to make and he preferred to make such motion in their absence. Motion Granted. Prospective jurors directed to leave Court room and they did so.

EXHIBIT G, ANNEXED TO AMENDED PETITION

Mr. McDonough moved to be relieved as Counsel, stating defendant wanted Counsel of own choosing and on all other grounds specified in record. Motion Denied.

In absence of Jurors, Mr. McDonough handed up to Court a seven-page memorandum, "Motion to Stay Proceedings", he received from defendant. The Court read same and directed to be marked as Court's Exhibit for identification and made statement which appears in the record.

Defendant remanded to County Jail until January 21st, 1964.

On January 21st, 1964, Mr. McDonough, Counsel, in absence of prospective Jurors, informed Court he had received a seven-page brief from defendant headed, " Motion for Stay of Proceedings", which defendant wanted to read to the Court. The Court refused to permit defendant to read same but granted Mr. McDonough permission to read same. The Court denied Motion contained in brief and directed said brief be marked Court's Exhibit #3.

Mr. McDonough moved for continuing objections in relation to Court's Exhibit #3. Motion Granted.

Defendant remanded until January 22nd, 1964.

On January 23rd, 1964, in absence of Jury, Mr. McDonough informed Court he had received message in writing from Defendant headed, " Motion for an Order Granting Defendant the Right to

EXHIBIT G, ANNEXED TO AMENDED PETITION

Correspond with The Department of Justice". Mr. McDonough read this into the Record. Decision Reserved. Same marked Court's Exhibit G.C.

Defendant remanded.

On January 27th, 1964, in absence of Jury, Mr. McDonough addressed the Court as appears on the Record, substance being that defendant asked him to withdraw as Counsel and defendant would try his own case. Motions were Denied.

Defendant remanded until January 28th, 1964.

On January 28th, 1964, in absence of Jury, Mr. McDonough informed Court he had received written Motion from defendant and asked permission to read same into the Record. Granted; and Motion denied.

Hon. Paul Kelly delivered a Charge to the Jury and the Jury retired in charge of a sworn officer and subsequently the

Jury returned into Court and after being duly called say they did find the Defendant, Alfred A. Argentini, Guilty on each Count.

Mr. McDonough moved for a polling of Jury. So Ordered. Jury polled individually, all Jurors answering in affirmative. Mr. McDonough moved to reserve rights to motions to day of sentence. Granted. Jury discharged.

Defendant's Pedigree taken. Defendant remanded to County Jail until day of sentence, March 13, 1964.

EXHIBIT H, ANNEXED TO AMENDED PETITION.

14. I, THE DEFENDANT, WITH THE ABOVE POINTS
IN MIND, PRAY TO THE HONORABLE COURT, TO ALLOW THIS
PETITION, TO BE READ, AND MADE PART OF THE COURT
RECORD.

I PRAY THAT YOUR HONOR, DISMISSE THISSELF,
ON THE GROUNDS THAT YOUR HONOR, HAS BEEN UNDUE
BIAS AND PREJUDICE TO MYSELF, THE DEFENDANT. THE
PUBLIC DEFENDER, MR. McDAVITT, HAS REQUESTED THAT
HE BE RELEASED FROM DEFENDANT, AND YOUR HONOR,
HAS DENIED HIS REQUEST.

I HAVE ASKED YOUR HONOR, TO GRANT ME TIME TO
OBTAIN COUNSEL OF MY OWN CHOOSING, AND I HAVE BEEN
DENIED. I HAVE HAD MY MUL HALL PARK, BY THE CITRICKS
OF THE NASSAU COUNTY JAIL, AND MY COMPLAINTS ON THIS
MATTER, PRAY TO THIS COURT WILL BE IGNORED.

I HAVE BEEN DENIED A SIGHT OF PROCEEDINGS, WHILE
I SEEK A CHANGE OF VENUE. I HAVE BEEN SUBJECTED
TO THE THREAT OF NOT BEING ABLE TO OBTAIN A FAIR AND
IMPARTIAL TRIAL, DUE TO PREJUDICIAL ARTICLES THAT HAVE
APPEARED AT NUMEROUS TIMES IN THE LONG ISLAND NEWS
PAPERS, WHICH HAS BEEN BROUGHT TO THE HONORABLE COURTS
ATTENTION, AND I AM STILL UNABLE TO SEE A SIGHT OF
PROCEEDINGS.

WHERE IS THE EQUALITY OF JUSTICE, THE EQUAL PROTECTION
OF THE LAW, AND A SIGHT OF FAIR TRAIL, WHEN ALL THESE
FACTS ARE A MATTER OF RECORD.

YOUR HONOR, AT THIS TIME I WOULD LIKE TO KNOW IF
I AM ENTITLED TO THE EQUAL PROTECTION OF THE LAW,

EXHIBIT H, ANNEXED TO AMENDED PETITION

AND ALSO A MR. PETER FUNK, ALBERT FERRIGNO, AND
CHARONY FERRIGNO.

I MADE THIS REQUEST TO THE DISTRICT ATTORNEY
ON OR ABOUT OCTOBER 7TH 1963, BUT I HAVE NEVER
RECEIVED THE CONSIDERATION OF BEING GRANTED THIS
BASIC CONSTITUTIONAL RIGHT.

AS IN THE ABOVE MENTIONED RIGHTS, PLUS THE FACT
THAT I AM NOW LIVING BEING DENIED THE RIGHT TO HAVE
IN MY POSSESSION, THE NEWSPAPER ARTICLES, RELATED AND
ANNOUNCED AT NUMBER OF LINES IN THE WORKERS

LEARN ARTICLES, AS NEEDED TO DEFEND IN THE
MATERIALS THAT HOW I AM BEING PRACTICED IN
LIVING TO TRAIL IN WISAU COUNTY.

ALL THE FUNDAMENTAL RIGHTS, OF BEING
PRESUMED INNOCENT, UNTIL BEING FOUND GUILTY,
LIVE IN COMPLETE FREEDOM.

HOW IS IT POSSIBLE FOR MR. TO KNOW WHAT IS
BEING SAID, BY THE PRESS, IF I DID NOT GRANTED THE
RIGHT TO A NEWSPAPER.

WHICH ARE THESE FACTS, BEING KNOWN TO YOUR
HONOR, IF ONLY THAT YOUR HONOR, WOULD DISQUALIFY
HIMSELF, FROM THIS TRIAL.

YOUR HONOR, YOU, YOURSELF HAD TO DEFEND
A MISTRIAL ON THE 3RD DAY OF TRIAL IN 1964, WHEN IT
WAS BROUGHT TO YOUR HONOR'S ATTENTION, THAT LIESLICIOUS
STATEMENTS, WERE PRINTED IN THE NEWSPAPERS.

EXHIBIT H, ANNEXED TO AMENDED PETITION

STATE THAT I TOLD JUDGE GOLDSTEIN, THAT MY FATHER WOULD PAY FOR COUNSEL, AND THAT JUDGE GOLDSTEIN AND PHONED MY FATHER AND ^{WAS} SPOKEN TO HIM, AND MY FATHER AND TOLD JUDGE GOLDSTEIN HE DON'T HAVE THE MONEY TO HELP ME.

THE COURT RECORDS WILL SHOW THAT I TOLD JUDGE GOLDSTEIN, THAT I DO NOT WANT OR NEED MY FATHERS FINANCIAL AID, AND ALSO THE RECORDS WILL SHOW THAT JUDGE GOLDSTEIN, DID CALL MY FATHER, BUT IN FACT MR. JUDGE GOLDSTEIN SIGNED HIMSELF HE WAS UNABLE TO TALK WITH MY FATHER, BUT HE DID SICK WITH MY MOTHER WHO HAS NO KNOWLEDGE OF WHAT IS TAKING PLACE IN CONNECTION WITH THE ALLEGED CHARGES AGAINST ME.

IN VIEW OF ALL THE ABOVE MENTIONED FACTS, I RESPECTFULLY PRAY THAT YOUR HONOR, DISQUALIFY HIMSELF, FROM ALL FURTHER PROCEEDINGS IN THIS CASE.

I REQUEST THE HONORABLE COURT TO LET ME STATE, FOR THE COURT RECORD, WHO I WOULD LIKE IT ENTERED INTO THE RECORD THAT I AM FORCED TO CONTINUE TRIAL UNDER THESE PRESENT CONDITIONS, THAT I AM DOING SO UNDER PROTEST AND I WOULD LIKE EXCEPTIONS MADE ON THIS AND ALL FURTHER PROCEEDINGS AND FOR THE COURT RECORD TO BE STATED.

Respectfully yours,
John J. Coughlin

EXHIBIT I, ANNEXED TO AMENDED PETITION.

Hon. P. J. E. L. M.

County Judge

Indictment # 100-114

PEOPLE OF THE STATE OF NEW YORK

--against--

W.C. *PA's Copy*

ALFRED A. ARGENTINE,

HON. WILLIAM CAHN
District Attorney
Warren County
MacAda, New YorkALFRED A. ARGENTINE, 19375
Lawrence Pro Se
Box 143
Attica, New York

Defendant

PAPERS NUMBERED

Notice of Motion/Order to Show Cause

Supporting Affidavits

Answering Affidavits

Reply Affidavits

Affidavits/Exhibits

Filed Papers

Briefs: People's Petitioner's

Defendant's

The foregoing papers numbered 1 to 10, having been filed for the motion

This is a pro se application by defendant in the nature of

Writ of Error Coram Nobis for an Order vacating a judgment of conviction
rendered January 26, 1964 after a jury trial.

EXHIBIT I, ANNEXED TO AMENDED PETITION

Defendant asserts he was deprived of the right to retain counsel of his own choosing. Although the error complained of appears on the record, it could be rectified by a Writ of Error Coram Nobis. People v. Landigan, 7 N.Y. 2d 317.

A review of the record before the court clearly indicates defendant was afforded ample opportunity to retain counsel of his choosing. Defendant having been unsuccessful either retained experts, the court assigned James J. McPenough, Attorney in Charge, Legal Aid Society, Criminal Division, as counsel for defendant.

The attorneys in the office of Legal Aid in Nassau County have long since demonstrated their ability and integrity. The Courts have held that "As long as assigned counsel are men of ability and integrity a discretion and responsibility for their selection rested with the court, to be exercised free of outside interference". People v. Braheen, N.Y. 2d 173, 181.

[On the eve of trial defendant moved this Court to permit him obtain counsel of his own choosing or to defend himself.] Defendant had had ample opportunity and assistance to retain counsel prior to the court's assignment of counsel and had been unsuccessful. Defendant had, more than one occasion prior thereto discharged counsel and had caused

EXHIBIT I, ANNEXED TO AMENDED PETITION

peated delays in the proceedings. Said motion was denied, a defendant
wing no right to delay his trial unreasonably regardless of reality, nor
in the law be construed to give him the power to do so. People v. Johnson,
ipra.

With regard to alleged failure of defense counsel to call
certain witnesses, the Court does not act as surity for counsel even if
there have been errors in judgment. The Legal Aid Office has repeatedly
exonstrated skillful representation of their clients.

"Coram nobis may not be availed of to remedy
counsel's negligence or error of judgment.
It would be folly indeed for the courts to
sit and hear disappointed prisoners try their
former lawyers on charges of incompetency
representation. Absent evidence that the trial
judge appointed an attorney who was unfit to
defend the accused or that the judge allowed
counsel to continue to act after it appeared
that his representation was such as to make the
trial a farce and a mockery of justice, the
fact, if it was one, that assigned counsel made
an error of judgment or of tactics during the
course of trial is insufficient ground for
Coram nobis". People v. Irvin, 7 N.Y. 2d 350,
351.

EXHIBIT I, ANNEXED TO AMENDED PETITION

[REDACTED] review of the record to determine if there is a cause as claimed by defendant. A Writ of Error to the N.Y. Court of Appeals is not a remedy for this defendant. Since no hearing is required there is need to assign counsel. Therefore, it is

ORDERED that said motion is in all respects denied.

E N T E R

GRANTED	
IND:	DEC 31 1962
Wm. J. McSHELL	

BE IT KNOWN that: The petitioner be and is hereby advised of his right to appeal from this determination and upon proof of his financial inability to retain counsel and to pay the costs and expenses of the appeal, petitioner may apply to the Appellate Division for the assignment of counsel and for leave to prosecute the appeal as a poor person and dispense with printing. (Rule V, Appellate Division, Supreme Court, 2nd Department).

Ko//

JCC

EXHIBIT J, ANNEXED TO AMENDED PETITION.

PEOPLE OF THE STATE OF NEW YORK

—against—

ALFRED A. ARGENTINE

HON. WILLIAM CAHN
District Attorney
Nassau County
Mineola, New YorkALVIN MANNING MILLER, ESQ.
ATTORNEY FOR DEFENDANT
71 NORTH MAIN STREET
FREEPORT, NEW YORK, 11520

Defendant

PAPERS NUMBERED

Notice of Motion/Order to Show Cause.....

Supporting Affidavits.....

Answering Affidavits.....

Reply Affidavits.....

Affidavits/Exhibits.....

Filed Papers.....

Briefer: People's Petitioner.....Defendant's Respondent.....

The foregoing papers numbered 1 to.....having been read on this motion.....

While on parole under the judgment of conviction
 herein for the Crime of Forgery in the Second Degree (3 counts), upon
 which concurrent prison sentences of from ten years to twenty years on
 the first two counts, and from two and a half years to ten years on the
 third count had been imposed by Judge Paul Kelly of this court on the
 25th day of September 1964, following a verdict of guilty after a jury
 trial, the defendant has applied, pro se, for an order in the nature of
 a Writ of Error Coram Nobis to vacate said judgment.

EXHIBIT J, ANNEXED TO AMENDED PETITION

The defendant's basis for his attack on the legality of said judgment of conviction rests upon the two-fold claim (1) the court improperly assigned the public defender to act as his attorney herein, and deprived him of the right to have counsel of his own choice, and (2) his request made during the course of the trial to be allowed to continue pro se with the defense of the case was improperly denied by the trial court.

A hearing on the issues raised by the defendant was conducted by this court in pursuance of an order to the Appellate Division, Second Department, dated the 9th day of November 1970, and the defendant, as an indigent defendant, was represented herein by court appointed counsel.

Essentially, the defendant claims that his right to be defended by counsel of his own choosing began in 1963 with indictment 18690, and continued through the trial of that indictment before Judge Goldstein which ended in a mistrial, and with the trial herein of indictment 19147 before Judge Kelly.

It is defendant's contention that he was held incommunicado in the jail to prevent him from retaining private counsel. He also asserts that he was prevented from consulting with his father, and such prospective attorneys. It is also his claim that the financial wherewithal to hire an attorney could have come from his parents, or his wife, or his former business associate. His final attack on the judgment is based upon a claim that before Judge Kelly was elected to the bench, the defendant retained him as attorney in connection with an

EXHIBIT J, ANNEXED TO AMENDED PETITION

earlier unrelated matter. He now asserts that on the advice of Judge Kelly, who visited him in jail as an attorney in an unrelated matter in 1961, he made a written complaint to the bar association against another attorney, and that because he had stated in such letter that it was on the advice of Judge Kelly, the latter was offended and bore him ill will which continued to the time when Judge Kelly sat as the trial judge herein.

Although the relief herein sought is specifically with respect to indictment 19147, the proofs offered at the hearing and the material incidents and the chronological order of events started on April 30, 1963 when the defendant was charged with the commission of the crime of forgery in the second degree (8 counts) under indictment 18690, and with the crime of forgery in the second degree, under indictment 18691.

On October 1, 1963, the defendant was charged with forgery in the second degree (2 counts) and grand larceny in the first degree (2 counts), under indictment 19146, and with the crimes of forgery second degree (2 counts) and grand larceny second degree, under the instant indictment, 19147.

In considering the defendant's experience with obtaining private legal counsel, it is established by the evidence, and the court finds, that commencing with the prosecution and trial of indictment 18690 before Judge Goldstein, which resulted in a mistrial, and the ultimate trial before Judge Kelly of indictment 19147, which resulted in the judgment herein under attack, apart from the defendant's court appointed attorney, and the public defender, James J. McDonough, Esq., the defendant hired and discharged

EXHIBIT J, ANNEXED TO AMENDED PETITION

the following attorneys: (1) Bracken & Suster, Esqs.; (2) Harry Abbey, Esq.; (3) Gilbert Riess, Esq.; after which the following attorneys declined his request to represent him - (4) Joshua Sussman, Esq.; (5) Herman Kanfer, Esq.; (6) Irwin Germaine, Esq.; (7) Harry Kutner, Esq., and (8) Max Lome, Esq.

When indictment 18690 came on for trial before Judge Goldstein on December 16, 1963, although Mr. McDonough was present and ready to proceed with the defense, the defendant persisted in his efforts to discharge Mr. McDonough and obtain privately retained counsel.

At this point, Judge Goldstein offered to call Mr. Kutner and Mr. Lome at the defendant's behest and ask them if either would be willing to be retained as attorney by the defendant. He also offered to call the defendant's parents. When this took place the defendant promised that if these two prospective attorneys refused to be retained by him, that he would proceed to trial without further delay with his court appointed counsel, Mr. McDonough.

Judge Goldstein testified, and the court finds, that both of these attorneys refused to represent him, and that when the judge spoke to defendant's mother on the telephone, she indicated to him that his parents had no money with which to pay the fee to retain counsel for the defendant.

The trial before Judge Goldstein ended in a mistrial. After the mistrial occurred before Judge Goldstein under indictment 18690, Mr. McDonough, public defender, continued as attorney for the defendant. Indictment 19147 was moved for trial before Judge Kelly on January 6, 1964. Again, the defendant moved for Mr. McDonough's discharge as his court appointed counsel, claiming all the

EXHIBIT J, ANNEXED TO AMENDED PETITION

the 9th attorney on the list to enter the scene to conduct the defense of the case on his behalf.

When the case was again called for trial on January 20, 1964, and Mr. Winters made no appearance as counsel for the defendant, nor filed any affidavit of engagement, the trial commenced with Mr. McDonough acting as defendant's attorney.

Defendant testified that Mr. Winters was paid a legal fee of fifteen hundred dollars by persons unknown to the defendant (S.M.333) and that after the court refused an adjournment of the trial from January 6, 1964 to January 15, 1964, the money was returned and a receipt obtained. The court offered the defendant an opportunity to produce the alleged receipt. Neither Mr. Winters', nor the alleged receipt was produced in court, and the defendant's claim stands completely unsupported by any proof. The court finds that this claim by the defendant is completely false and is injected merely to confound and confuse the issues herein. (S.M.341-343).

In any event, the trial under indictment 19147 actually commenced on January 20, 1964. After the trial was nearing its end, a motion was made on behalf of the defendant, for the first time, to allow him to represent himself to the conclusion of the case. This motion was denied, and this ruling forms the basis of defendant's second attack on the validity of the judgment herein.

In an effort to establish the availability of funds with which to hire counsel, defendant called his former wife, Dorothy Matera, as a witness. She testified that she married the defendant in 1962, and that she obtained a Mexican divorce from him

EXHIBIT J, ANNEXED TO AMENDED PETITION

whereabouts until January 1964, when she learned from the newspapers that he was convicted of forgery. Although she testified that she had funds available for a retained counsel for the defendant, she did not describe the amount of the funds she had, nor where such funds existed. When questioned as to whether she contacted the police to determine the whereabouts of her missing spouse, she answered in the negative, a fact which militates against the existence of any concern or interest on her part for the defendant, and which renders all of her testimony on this score totally unbelievable.

The defendant also stated on this hearing that his former business associate, a Mr. Baker, had available funds in the latter's name, but apart from this assertion, there was no showing whatever, whether in fact the former partner had such funds, and whether an inclination on his part to help the defendant financially, in fact, existed. It developed that at the time of this hearing, the business partner was deceased and defendant's testimony concerning what his former partner may have done for him falls into the realm of mere expectation and speculation, without any basis in fact whatever.

It is the court's finding that the defendant was an indigent who had no funds, nor were any available to him to hire counsel during 1963 and 1964.

This hearing lasted several days and comprises over 400 pages of testimony. During that time the court had an ample opportunity to observe the defendant's attitude and demeanor as a witness.

EXHIBIT J, ANNEXED TO AMENDED PETITION

reliability of the defendant's testimony and his sizeable criminal record consisting of more than 20 convictions, impels the court to conclude that this individual is not worthy of belief. The court resolves all the questions of fact raised by this Coram Nobis application, adversely to the defendant.

When it suited this defendant's purposes, he has, on several occasions during this hearing, made several false claims, which included the claim that the official stenographic records of the various court proceedings which were received in evidence, were incorrect.

Apart from the testimony of Mrs. Evelyn Shanser, an official court reporter called by the defendant, who testified that a page of the record before Judge Goldstein was not in proper numerical sequence, the defendant has totally failed to establish any error in the court records, and the court finds that such court records are true and correct. In this connection, it may be noted that on September 23, 1964, Judge Michael D'Auria denied defendant's motion to correct the record, and further, into the same category, falls the claims on the part of the defendant that he was held incommunicado and prevented from making contact with his father, or various attorneys, as completely belied by the jail records.

It has been shown by the testimony of an officer of the jail, and the official jail records, and the court finds, that in the interval between August 17, 1963, and March 14, 1964, the defendant's father visited the defendant on fourteen separate occasions, and not but once, as the defendant testified.

EXHIBIT J, ANNEXED TO AMENDED PETITION

It has also been established, and the court finds, that in the interval between September 6, 1963, and September 11, 1964, the defendant was visited by the following attorneys on the following dates: Gilbert Riess, Esq., September 6, 1963; Harry Abbey, Esq., September 19 and October 18, 1963; Irwin Germaise, Esq., ~~October 23, 1963~~ by Saul Horng Esq.; Daniel Sullivan Esq., on ~~October 23, 1963~~ October 13, 1963; James McDonough, Esq., on November 19 and December 19, 1963; Michael J. Winters, Esq., on December 30, 1963; Benjamin Friedler, Esq., on January 3, 1964; James McDonough on January 24, 1964; and D. Goldman on February 28, 1964 and September 11, 1964.

It is the determination of this court that the defendant was not deprived of the right to confer with his relatives or with various attorneys. His assertion that his mail was interferred with is also completely unsupported by any valid proof, and the court finds that this claim is also without factual basis.

The defendant's assertion hereinabove mentioned concerning Judge Kelly's bias against him, is likewise a maneuver on the part of the defendant to cast doubt upon the fairness of Judge Kelly's disposition of the defendant's applications to rid himself of Mr. McDonough as his attorney, and obtain counsel of his own choice, and his later motion during trial for leave to defend the action pro se.

In addition, the defendant again purports to suggest that when he was sentenced herein by Judge Kelly as a prior felony offender, he was under the influence of the same bias, and

EXHIBIT J, ANNEXED TO AMENDED PETITION

that he was so sentenced because his then attorney, Beatrice Burstein, Esq., (now a judge of the Nassau County Family Court) falsely represented to him that he was merely pleading to a misdemeanor, when on November 15, 1961, in relation to an earlier indictment, 16216, he entered a plea to the crime of forgery in the second degree, and petit larceny before the then County Court Judge, Paul J. Widlitz.

It is the defendant's contention now that because of this fraud on the part of his former attorney, the said judgment of November 15, 1961, should not have been used by Judge Kelly as a predicate judgment to sentence him herein as a prior felony offender on March 18, 1964, and that he had not been aware of this until he was then brought before the court for sentence herein.

The patent falsity of this statement of the defendant is sharply exposed by reference to his earlier comments to Judge Goldstein on December 16, 1963, (SMB17) in which he clearly demonstrated his criminal status as follows:

"THE DEFENDANT: There is no violence on my record. I have only one felony for forgery and the rest are petit larcenies". (People's Exhibit 3, page 74).

Judge Kelly testified in this matter, and it was his testimony that he had no recollection of ever representing or visiting the defendant in jail in 1961, and that if he had such recollection, he would have disqualified himself.

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The court finds that Judge Kelly had no **recollection** of any involvement with the defendant in 1961 in **the capacity of lawyer**, and that no bias existed against the defendant on the part of Judge Kelly at any time during the proceedings herein.

Although this court makes a specific **finding of no bias** on Judge Kelly's part, reference to this aspect of defendant's claim against Judge Kelly is also found in the **record of sentence** on March 18, 1964, and being a part of the **record**, it is not the proper subject for *coram nobis* relief.

Coram nobis may not be availed of as a substitute for an appeal.

People v. Schwartz, 12 N.Y. 2d 755; People v. Howard, 12 N.Y. 2d 65.

In this connection, it should also be observed at this point that the judgment of conviction herein (19147) was the subject matter of an appeal which was dismissed by order of the Appellate Division dated October 21, 1966. Defendant's motion to vacate said order of dismissal was denied by an order of the Appellate Division dated November 23, 1966.

After considering all of the credible evidence received during the hearing herein, it is the court's determination that the defendant embarked upon a calculated effort to delay, frustrate and prevent the trial both upon indictment number 18690 before Judge Goldstein, and upon indictment number 19147, before Judge Kelly.

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It is also the determination of this court that the defendant at no time prior to the said trials, was in a financial position to pay the necessary legal fee to retain a lawyer, and further, that neither his parents, nor his former associate, nor his former wife, were ready with the available funds and inclined to make such advance. These facts were known to the defendant, and, notwithstanding, he persisted in his claim for counsel of his own choice, merely as a ploy to delay and frustrate the beginning of the trials. His insistence on the right to counsel of his own choice was with full knowledge on his part of his financial inability to retain such counsel, and that all counsel of his choice would decline to work without the prospect of payment.

As stated in People v. San Sonei, 23 A.D. 2d 352, his persistent demand for private counsel was merely a contrivance to be " * * * used for tactical maneuvering to avoid or postpone trial * * * ". See People v. Higging, 23 A.D. 2d 504, aff'd. 16 N.Y. 2d 751.

Where indigency is established, the prerogative as to choice of assigned counsel is with the court, and not the defendant. The rule is stated in People v. Brabson, 9 N.Y. 2d 473, as follows:

EXHIBIT J, ANNEXED TO AMENDED PETITION

"There thus remains only one basic issue to be disposed of: whether the prerogative as to the choice of assigned counsel rests ultimately with the court or with the indigent defendant. That question has been raised a number of times and has always been answered in the same manner. It is an age-old rule, both in this State (see People v. Battice, 6 A.D. 2d 773, affd. 5 N.Y. 2d 946; People v. Wansker, 108 Misc. 84; People v. Fuller, 35 Misc. 189 and elsewhere, McDonald v. Hudspeth, 113 F. 2d 934, cert. denied 311 U.S. 683; Commonwealth v. Novak, 395 Pa. 199; Commonwealth v. Knapp, 9 Pick [26 Mass.] 495, that as long as assigned counsel are men of ability and integrity, the discretion and responsibility for their selection rest with the Court, to be exercised free of outside interference."

This rule has been followed most recently

in People v. LaMonica, 33 A.D. 2d 1004:

"The right to counsel of one's choice is not to any counsel but to any counsel who is willing to accept the assignment. Otherwise one must accept counsel designated by the court, People v. Brabson, 9 N.Y. 2d 173, United States v. Burkeen, 355 2d 241, Cert. Den. Sub. nom. Matlock v. United States, 384 U.S. 957, barring lack of competence, conflict of interest, or other disqualification, LaMonica, *supra*, 1005".

The decision in People v. Nelson, 231 N.E.

115, 117 (Ill.) is singularly applicable to the issues presented in this matter. The rule therein expressed covers both the questions pertaining to defendant's right to counsel of his own choice and his right to be allowed to proceed pro se after the trial has commenced.

The rule stated therein, with which this court is in full accord, is as follows:

EXHIBIT J, ANNEXED TO AMENDED PETITION

"It is next urged that the defendant was entitled to represent himself and the refusal of the trial court to discharge the public defender at his request was error. The authority for this proposition cited to us is the general rule contained in 28 U.S.C. Criminal Law §979(4). The record in this case indicated that as the trial was well in progress the public defender advised the court that the defendant wished to release the public defender of the duty of representing him. Inquiry by the court of the defendant confirmed the request. The court denied the defendant's request to remove his attorney and ordered that the trial proceed. The attorney thereafter indicated that he was proceeding not at the desire or request of the defendant but at the direction of the court. The case continued thereafter with the public defender representing the defendant and fully participating in the proceedings. The motion for a new trial did urge that the court committed error in refusing to allow the defendant to dismiss his counsel and represent himself."

It is, of course, well-settled that an accused has the right to have counsel act for him or has the right to act for himself. He must elect between these alternatives but it does not follow that a defendant in a criminal proceeding may attempt to exercise the right to counsel or the right of self-representation to thwart the administration of justice. See People v. Ephraim, 411 Ill. 118, 103 N.E. 2d 363 (1952). As stated in People v. Bright, 78 Ill. App. 2d 2, 223 N.E.2d 215, 220 (1st Dist. 1966):

"It has been held that the right of a criminal defendant to represent himself also derives from the Federal Constitution, and that the right of a defendant in a criminal case to act as his own lawyer is unqualified, if invoked prior to the start of the trial (United States ex rel. Maldonado v. Denno, 343 F.2d 12, 15 (2nd Cir. 1965)). Once the trial begins, however, a defendant no longer has an unqualified right to discharge his attorney and represent himself. United States ex rel. Robinson v. Fay, 348 F.2d 705, 707 (2nd Cir., 1965); United States v. Bentvena, 319 F.2d 916, 938 (2nd Cir., 1963), cert. den. Grijalvo v. United States, 375 U.S. 940, 84 S.Ct. 345, 11 L.Ed 2d 271; United States ex rel. Hyde v. McMann, 2 Cir., 263 F.2d 940, in which the court stated at page 943:

EXHIBIT J, ANNEXED TO AMENDED PETITION

* * * The right to discharge counsel after the trial has begun is a qualified one and to support a reversal of a conviction because the trial judge denied a motion to discharge counsel there must be a showing that defendant was prejudiced by the denial."

In this case, we find no indication whatsoever that the defendant was prejudiced when the court, as a matter of discretion, denied the motion to discharge the public defender and allow the defendant to proceed by representing himself.

~~Defendant's contention herein have been fully and~~
conclusively refuted by the testimony of the People's witnesses,
and the official records of this court received in evidence.

Accordingly, on the basis of the foregoing findings of fact and conclusions of law, the defendant's application is therefore denied in all respects, and it is

ORDERED, that the defendant's motion herein is hereby denied in all respects.

ENTER

GRAFTON	
DATED:	JULY 8, 1971
HAROLD W. MURKIN CLERK	

Harold W. Murkin
J.C.C.

EXHIBIT K, ANNEXED TO AMENDED PETITION.

May 27, 1970

Alfred Argentine 19875
Box 1149
Attica, N.Y.

Dear Sir:

This will reply to your letter of May 4, 1970.

8/31 Paul Kelly
8/30 Samuel Greason
9/28 Beatrice Burstein
9/13 J.M. Lulayk(not sure of spelling)
9/13 William Deeley
10/3 Father
10/11 Prob. Off. Tretchlinger
10/16 " " "
10/23 Det. Schuckmann and Anderson

Very truly yours,

ARTHUR E. KRUEGER, Warden
Nassau County Jail

Robert J. Macha
By: Robert J. Macha
Supervisor

rjm

EXHIBIT L, ANNEXED TO AMENDED PETITION.

Bar Association of Nassau County, N.Y., Inc.

15th and West Streets
Mineola, New York 11501
Tel. (516) 747-4070

Dept S+C
2/9

COMMITTEE ON GRIEVANCES
DOLPH ED. HOROWITZ Chairman
MICHAEL P. ASPLAND Vice-Chairman
JATHANIEL TAYLOR Counsel

February 24, 1970

MEMBERS

ROSS A. BAER
CHARLES J. BARNETT
JOSEPH P. BELLAMENTE
RAY M. BRAND
MURRAY A. CHANIN
ROBERT W. CORCORAN
BERTRAM B. DAIKER
JULIUS J. D'AMATO
THOMAS P. DOUGHERTY
DAVID FROMSON
RICHARD FURLONG
GARY HOLMAN
JACK KORSHIN
JAMES A. MCKAIGNEY
FREDRIC H. MONTFORT
EDWARD T. O'BRIEN
MORRIS ROCHMAN
LAURENCE ROSENTHAL
DAVID D. ROTHBART
MORRIS H. SCHNEIDER
HENRY W. SCHOBER
WILLIAM A. SPECKELS
JOHN J. SUTTER
JULIUS WOLFSON

Mr. Alfred A. Argentine
#19875
Box 149
Attica Prison
Attica, New York 14011

Dear Mr. Argentine:

In accordance with your request we are enclosing a copy of your letter dated September 6, 1961 addressed to the Bar Association of Nassau County.

As you were advised in September, 1961 our file on this matter was closed because the Committee found no evidence of improper or unprofessional conduct on the part of the attorney.

I hope that this letter gives you the information that you desire.

Very truly yours,

Michael P. Aspland
Michael P. Aspland
Vice-Chairman

MPA:BA
End.

EXHIBIT L, ANNEXED TO AMENDED PETITION

represent me in court. I was charged with the issuing of fraudulent checks, in Nassau County. After appearing before Judge Samuel Greason, I was given a one year probation, with stipulation that I make restitution through my attorney, Mr. Castellano. I was charged a fee of \$500.00, for which my father and wife signed a note. In a week's time, the fee was paid and the note was returned to me. I pleaded guilty to two charges; made restitution, and I was placed on probation.

In May 1958, Mr. Castellano told me to plead guilty to the rest of the check charges and that he would get me six months in the County Jail. From a period of October 1957 to May 1958, I paid Mr. Castellano a considerable sum of money. Every time that I reported to the Probation Officer, he would ask for the payment receipts. I would tell him that Mr. Castellano didn't give me any. I was finally able to obtain a letter from Mr. Castellano stating that he was holding in escrow \$470.00 for the payment of bad checks the Court had ordered me to make good.

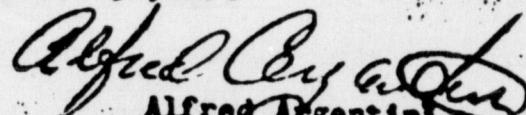
Until recently the letter was in the possession of Judge S. Greason; who more than once, in the past two years, has shown the letter in practically every Part of the Nassau District Court and to almost all the District Court Judges.

Judge Greason, after retiring from the Bench; and after I had informed him of Mr. Castellano's dubious actions, undertook my defense. Since Judge Greason was handling my case without charging me a fee, I took his advise of not pressing the issue against Mr. Castellano until my cases were disposed of. After a great deal of adverse publicity, to both Judge Greason and myself, I was sentenced to one year in the County Jail.

After I was committed to the County Jail, my father asked Judge Greason for the letter that had been written by Mr. Castellano. The Judge informed my father that he had misplaced, or lost the letter. I am sure that Judge Greason will verify that such a letter existed because of the fact that the letter was produced in court many times by him. I also wish to state that money orders were sent to Mr. N. Castellano, by my wife, from the Western Union branch of 51st St and Lexington Ave., N. Y. C.

Although Judge Greason, who visited me last week, suggested I do not make a complaint; I was advised by Judge Kelly, of Freeport, N. Y., to make a formal complaint against Mr. Castellano. Therefore, the reason for my writing to your office

Very truly yours


Alfred Argentini
P.O. Box 521
Hempstead, N. Y.

AFFIDAVIT OF A. SETH GREENWALD IN OPPOSITION TO
AMENDED PETITION.UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORKFILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E. D. N. Y.

X JUN 6-1974

STEPHEN P. SAPIENZA as Attorney for ALFRED A. ARGENTINE,	:	TIME A.M.
	:	P.M.
Petitioner,		: <u>AFFIDAVIT IN OPPOSITION</u>
-against-		: 74 C 193
LEON J. VINCENT, Warden, Greenhaven Correctional Facility,	:	
Respondent.		:

-----X-----

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

A. SETH GREENWALD, being duly sworn, deposes and
says:

I am an Assistant Attorney General in the office of LOUIS J. LEFKOWITZ, Attorney General of the State of New York, and make this affidavit in opposition to petitioner's application for a writ of habeas corpus.

From the amended petition served herein it appears that the actual petitioner, Alfred A. Argentine(i), is presently incarcerated under the custody of the New York State Department of Correctional Services pursuant to a judgment of the County

AFFIDAVIT OF A. SETH GREENWALD IN OPPOSITION TO
AMENDED PETITION

Court, Nassau County, January 28, 1964. Petitioner was convicted by a jury on two counts of forgery in the second degree and one count of grand larceny in the second degree. Sentence was ultimately imposed on September 25, 1964 and consisted of ten to twenty years on two counts, and two and one-half to ten years on the third count, all concurrent terms.

Apparently a notice of appeal was filed March 18, 1964* from the initial imposition of sentence. No appeal was ever perfected, although forma pauperis relief and typewritten briefs were allowed. Ultimately the Appellate Division, Second Department dismissed the appeal on October 3, 1966. Of course there is an excuse - inaccurate trial transcript but then petitioner never accepts any transcript as accurate, even after an adverse decision on a motion to correct record, 9/23/64 (D'Auria, J.). See coram nobis hearing transcript, cross-examination of Alfred Argentine (C.N.), 195 et seq., 228 and Gibbons, J., decision reciting D'Auria, J., ruling.

There is also an affirmance of a County Court order of September 29, 1966 by the Appellate Division, Second Department, 282 N.Y.S. 2d 450, May 29, 1967.

In the exhibits to the petition herein there is a denial of a coram nobis without hearing (Kelly, J., Dec. 31, 1969). On appeal, this was reversed, 35 A D 2d 827, 317 N.Y.S. 2d 599

* The sentence of September 25, 1964 was a resentencing.

AFFIDAVIT OF A. SETH GREENWALD IN OPPOSITION TO
AMENDED PETITION

(2d Dept. 1970). It was held that Argentine was entitled to hearing. Thereafter he received a hearing on the remand, and Judge Gibbons denied the writ, July 21, 1971 (Exhibit "J").**

Another coram nobis writ was decided by Judge Altimari of the County Court and denied October 10, 1973, and November 16, 1973. Leave to appeal was not granted by the Appellate Division.

Much has been made of the failure of Justice Conable to decide a habeas corpus writ in Wyoming County from April, 1970. However, in view of the later coram nobis hearing before Judge Gibbons, it seems this whole proceeding is academic. Certainly petitioner has a full opportunity in Nassau County before Judge Gibbons, at a later date, to air all his contentions.

It is fair to say that petitioner's numerous applications and several indictments have resulted in a very confused litigational history.

I. FAILURE TO EXHAUST STATE REMEDIES ON APPEAL

I have previously indicated that a decision on the "pending" habeas corpus before Justice Conable might show that state remedies, 28 U.S.C. § 2254(c) had not been exhausted. However in view of the later (after the submission in Wyoming County of the habeas corpus) coram nobis decision by Judge

** I am submitting the minutes of this hearing (over 400 pages) as the best record of petitioner's case in the state courts. The trial transcript has not been delivered.

AFFIDAVIT OF A. SETH GREENWALD IN OPPOSITION TO
AMENDED PETITION

Gibbons and the failure to appeal, there is a question of deliberate bypass of state remedies. I have been informed by Alan Manning Miller, counsel for petitioner on the Gibbons' coram nobis that Argentine had notice of the decision and not to appeal, apparently because, among other reasons, at the time he was out on parole.

A failure of petitioner for federal habeas corpus relief to pursue claims made in a New York coram nobis proceeding through the appellate courts constitutes failure to exhaust state remedies. United States ex rel. Brock v. LaVallee, 306 F. Supp. 159 (S.D.N.Y. 1969); United States ex rel. Daniels v. Johnston, 328 F. Supp. 100, 109 (S.D.N.Y. 1971).

It is rather pertinent that the two times Argentine received a hearing with presentation of witnesses, his trial and Gibbons' coram nobis, there was a failure to have an appeals court review the matter. I submit there is a failure to exhaust state remedies thereby and also deliberate bypass.

II. THE SUBSTANTIVE ISSUES ON THE PETITION

Due to lack of access to the complete trial transcript, your deponent is at somewhat of a handicap in considering several of the issues in the petition. While the petition quotes extensively from the trial transcript the petitioner's attorney

AFFIDAVIT OF A. SETH GREENWALD IN OPPOSITION TO
AMENDED PETITION

asserts he also has no transcript and efforts to obtain same have been of no success. Irregardless, I will respond on the basis of the petition, the coram nobis hearing, and extracts of the trial minutes.

A. Compulsory Process of Witnesses

It should be emphasized that during his trial in January 1964, petitioner was represented by assigned counsel James J. McDonough, then Public Defender, now the head of the Legal Aid Society of Nassau County. Normally, this organization provides criminal defense of indigents, which Mr. Argentine was (Gibbons, J., decision). While Mr. Argentine presented motions for calling numerous witnesses, his attorney did not. Someone has to be responsible for trying a case and it was Mr. McDonough, not petitioner. Motions are made by counsel, not defendants. While Mr. Argentine might have thought these witnesses were helpful, the coram nobis testimony of Mr. McDonough shows that he had an investigation, several witnesses could not be located and as to others their testimony was irrelevant or would not be helpful to Mr. Argentine (C.N. 33-34). In fact petitioner had failed to provide any names of possible witnesses until the last day before trial (C.N. 35). Kelly knew the situation and on the basis that all witnesses had testified the trial continued (C.N. 34). This was Mr. McDonough's judgment and while it is easy to second-guess him ten years later, the

AFFIDAVIT OF A. SETH GREENWALD IN OPPOSITION TO
AMENDED PETITION

matters petitioner claims the witnesses (if available) would have testified to seem of dubious relevance. Besides, the petition fails to consider the danger of the witnesses' testimony. It is obvious that some were not the most honorable citizens and Argentine's associations would be explored, such as bookmaking activity.

As Judge Altimari noted (October 10, 1973) the substance of this ground was raised at the Gibbons coram nobis. It was decided adversely. Besides it was a point to be raised on appeal of the original conviction, which petitioner failed to have heard, pro se or by assigned counsel.

B. Confronting Witnesses - i.e. Lippens

On this point, petitioner claims that the use of the alias "Lippens" at times by a witness Lewis Horton, denied petitioner the right to confront the witness. Of course, he admits it was not "a complete denial". This all appears ridiculous. The witness was there, and, I presume cross-examined. So as to the facts, there was confrontation. Judge Altimari's decision state that the witness was extensively cross-examined as to previous criminal record. There was substantial evidence of a prior criminal record and use of aliases. More testimony on "Lippens" would have been merely cumulative. As the "Lippens" conviction would be used for impeachment, there

AFFIDAVIT OF A. SETH GREENWALD IN OPPOSITION TO
AMENDED PETITION

was already much adverse matter on Horton's credibility before the jury. Finally the police records showed both names so no great diligence was necessary to discover this.

C. Perjured Testimony

The "perjury" of Horton cited by petitioner, was on cross-examination. As above, access to Horton's criminal record was as easy as going to the courthouse. However to say the District Attorney knowingly used perjured testimony seems far-fetched. The petition fails to show just how Horton committed perjury, or its "knowing" use by the prosecution, a requirement for constitutional objection.

Due process does not require "that convictions ought to be reversed on the ground that information merely repetitious, cumulative, or embellishing of facts or presented to the court... was not disclosed to defense counsel." Giles v. Maryland, 386 U.S. 66, 98 (1967, Fortas, J. concurring).

D. Denial of Right to Counsel

If ever there was a defendant offered the opportunity to obtain counsel of his choice, it was petitioner. Actually the number of attorney's names mentioned at the coram nobis hearing boggle the mind. After a full hearing, Judge Gibbons found that petitioner, besides being unworthy of belief, simply had no funds to hire counsel and other than the Public Defender,

AFFIDAVIT OF A. SETH GREENWALD IN OPPOSITION TO
AMENDED PETITION

Mr. McDonough, it seemed no one would represent him. Petitioner's constant dissatisfaction with attorneys makes it doubtful that there is any attorney who would not at some point, be discharged. Experienced counsel obviously would avoid such a defendant.

It is not unreasonable that if the date of trial comes, and after many missteps, still no retained attorney appears, trial can proceed with assigned counsel. To ignore petitioner's experiences with Judge Goldstein (Pet. p. 12) when Judge Kelly rules on dismissal of Mr. McDonough is to subject the trial court to harassment. If petitioner could not or would not obtain retained counsel on another similar indictment, it is reasonable and obvious that he would not in the indictment which came to trial.

The record is clear that petitioner was only trying to delay his own trial by attempting to befuddle the court into believing retained counsel was on his way (decision of Gibbons, J.). Even if Mr. Argentine thought he could get such counsel, there had to be a limit to these antics. If Mr. McDonough's representation was not as effective as possible it was due to petitioner's failure to cooperate with his attorney, who he put in an obviously difficult position. There was no reasonable expectation that some other private counsel would be retained in view of the events before Judge Goldstein on the other indictment.

AFFIDAVIT OF A. SETH GREENWALD IN OPPOSITION TO
AMENDED PETITION

Clearly there is no allegation that the Public Defender's representation was so "horribly inept" to as to reach the constitutional proportions of "a lack of effective assistance of counsel". U.S. ex rel. Maselli v. Reincke, 383 F. 2d 129, 132 (2d Cir. 1967). Mr. McDonough did all he could under the circumstances. An uncooperative client cannot expect his attorney to do a perfect job when the client takes the position another attorney will soon be taking over.

E. Right to Counsel of Own Choice

In the coram nobis before Judge Gibbons it has already been found that Mr. Michael Winters, a private attorney purportedly petitioner's choice, was never paid a fee, made no appearance as counsel, or filed any affidavit of engagement when trial started January 20, 1964 with Mr. McDonough as petitioner's attorney. It was also found there were no funds available to petitioner to retain private counsel.

If petitioner could not retain private counsel he had to rely on the Public Defender. In view of the fact that petitioner had previously fired and discharged in connection with indictment 18690 and the ultimate trial some eight other attorneys:

AFFIDAVIT OF A. SETH GREENWALD IN OPPOSITION TO
AMENDED PETITION

- (1) Bracken & Sutter;
- (2) Harry Abbey;
- (3) Gilbert Reiss;
- (4) Joshua Sussman;
- (5) Herman Kaufer;
- (6) Irwin Germaise;
- (7) Harry Kutner; and
- (8) Max Lome,

requiring trial with Mr. McDonough was proper.

It is doubtful any attorney could reasonably represent petitioner except by assignment (I note that petitioner's present attorney on this application is from outside Nassau County and probably, was not aware of this astounding record). If the trial court herein were required to indulge petitioner's every whim it is doubtful the case would ever have come to trial.

F. Right to Proceed Pro Se

The petitioner claims he was denied the right to proceed ~~pro se~~ pro se. However he did not assert this right until well after the start of the trial. As is said in U.S. ex rel. Maldonado v. Denno, 348 F. 2d 12, 15 (2d Cir. 1965), cert. denied 384 U.S. 1007:

AFFIDAVIT OF A. SETH GREENWALD IN OPPOSITION TO
AMENDED PETITION

"Once the trial has begun with the defendant represented by counsel, however, his right thereafter to discharge his lawyer and to represent himself is sharply curtailed. There must be a showing that the prejudice to the legitimate interests of the defendant overbalances the potential disruption of proceedings already in progress, with considerable weight being given to the trial judges assessment of this balance".

See also United States v. Catino, 403 F. 2d 491, 497 (2d Cir. 1968), cert. denied 394 U.S. 1003.

Petitioner's quote (Pet. p. 15) of Judge Kelly's statement in Exhibit "I" is in a reversed decision, clearly superceded by Judge Gibbons' finding that with the trial nearing its end, "a motion was made on behalf of the defendant, for the first time, to allow him to represent himself to the conclusion of the case" (Emphasis supplied). The record is clear that no motion to proceed pro se was presented before trial. In fact, it is at odds with petitioner's position he was seeking retained counsel.

G. Judge Kelly's failure to disqualify himself

Petitioner's contention that Judge Kelly should have disqualified himself appears to be based on a state statutory ground, Judiciary Law § 14. As such I doubt if it is available on a habeas corpus as a basis for constitutional attack. Besides

AFFIDAVIT OF A. SETH GREENWALD IN OPPOSITION TO
AMENDED PETITION

the *coram nobis* record and hearing supports the lack of any recollection by Judge Kelly of an attorney-client relationship previously between himself and petitioner. Even the claim of petitioner fails to show such a relationship.* Judge Gibbons also found no evidence of bias on Judge Kelly's part. This was all based on the testimony of Judge Kelly and a basic lack of belief in petitioner's testimony at the hearing.

If petitioner had been a client of Judge Kelly he would have disqualified himself (C.N. 76). However there is no sign petitioner or his attorney ever asked Judge Kelly to disqualify himself on this basis.

III. CONCLUSION

The petitioner has presented a round-house attack on his state court conviction. In spite of a full hearing before Judge Gibbons, petitioner never appealed to the state appellate courts.

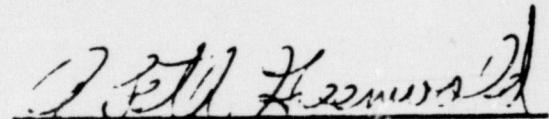
In any event there has been a full and fair hearing before Judge Gibbons. I submit the District Court can accept the findings of fact at the *coram nobis*, Townsend v. Sain, 372 U.S. 293, 318 (1963), and dismiss the petition without

* A jail visit does not indicate such a relationship.

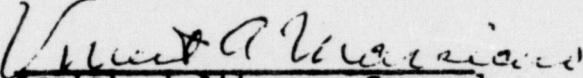
AFFIDAVIT OF A. SETH GREENWALD IN OPPOSITION TO
AMENDED PETITION

holding an evidentiary hearing. Petitioner's story is an old one and need not be aired again in view of the extended hearing with numerous witnesses before Judge Gibbons in Nassau County.

WHEREFORE, your deponent respectfully requests that the petition be dismissed.


A. SETH GREENWALD

Sworn to before me this
4th day of June, 1974


Assistant Attorney General
of the State of New York

SUPPLEMENTAL AFFIDAVIT OF A. SETH GREENWALD.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

X

STEPHEN P. SAPIENZA as Attorney for
ALFRED A. ARGENTINE,

Petitioner,

SUPPLEMENTAL AFFIDAVIT

-against-

74 C 193

LEON J. VINCENT, Warden,
Greenhaven Correctional Facility,

Respondent.

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

X*

JUN 20 1974

★

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)TIME A.M.
P.M.A. SETH GREENWALD, being duly sworn, deposes and
says:

I am an Assistant Attorney General in the office of LOUIS J. LEFKOWITZ, Attorney General and make this affidavit to supplement my previous affidavit heretofore submitted. This is done after receipt of the trial transcript and examination thereof.

In "A" of the Amended Petition, petitioner makes much of a claimed denial of compulsory process of witnesses. However the trial transcript shows otherwise. On January 28,

SUPPLEMENTAL AFFIDAVIT OF A. SETH GREENWALD

1964, after receipt of the investigator's report (Exh. "B" to Pet.), Mr. McDonough read a motion into the record. (314 et seq.) It states Mr. McDonough refused to subpoena a Bert Solomkin and "R. Brunner" (315). There was mention of "defend(ing) myself". (317, 318). Mr. McDonough stated that neither Solomkin nor Brunner in his judgment would give testimony helping defendant, but rather might be harmful or not relevant or admissible. Thus he did not subpoena them (318).

The mysterious "Miss Milo" was located after some effort at the last minute. Her real name was Mary Ann Migliaccio. She was subpoenaed by Mr. McDonough (319). However he had doubts as to the admissibility of her testimony. In short he did not feel justified in asking for a further delay to try to compel Miss Milo to come to court (322). Mr. McDonough stated that petitioner had two weeks to give his attorney the facts but it was not until the Friday before, January 23, that Mr. Argentine gave his attorney any list of witnesses* (323). Thus, while the motion was denied (323), it is obvious that Mr. Argentine's attorney was not asking the Court to compel the appearance of any witness. In Mr. McDonough's professional judgment he felt any of the "witnesses" mentioned would not have helped his client's case. An attorney has an obligation to the Court to properly try a case and not unnecessarily interfere or delay the trial.

* Note that Mr. McDonough immediately sent his investigator, Mr. Rodan, out the next day, Saturday, as well as Sunday.

SUPPLEMENTAL AFFIDAVIT OF A. SETH GREENWALD

As to "B", cross-examination of Lewis Horton, the trial transcript shows cross-examination by Mr. McDonough at 77 to 102, 112 to 117, 298 to 307. Mr. McDonough was subjected to long lists of questions from petitioner to ask Louis Horton, which in Mr. McDonough's judgment mostly were impropér (323).

As to credibility, I submit Mr. McDonough made a very strong attack on Mr. Horton's veracity. In fact, the Assistant District Attorney conceded as much in his closing statement to the jury. He showed that even if the jury disbelieved Horton entirely, the crime had still been proven by the other testimony and evidence (366). He harped on Mr. Horton's bad character (368). As Judge Altimari said (Exh. "D" to Pet.) any further evidence of aliases or prior convictions would have been merely cumulative and not material. And petitioner failed to show that the prosecutor knew or should have known about the alias "Lippens" in the Altimari coram nobis. This applies also to "C" of the Petition (Perjured Testimony). I would also take exception to the Petitioner's description of Horton as the "complaining witness" (p. 9 of Pet.). Mr. Sanford Hershey and the Hershey Travel Agency were the victims of the crime. Mr. Horton's testimony was not vital or necessary to finding Argentine guilty.

SUPPLEMENTAL AFFIDAVIT OF A. SETH GREEWALD

After reading the trial transcript, it is truly an affront to a lawyer of James McDonough's stature to suggest as in "D" of the Petition, that he failed petitioner in his representation. A client who fails to tell his lawyer of witnesses until the trial is well on, some four days (323), hardly can expect a brilliant defense. Mr. Argentine handicapped Mr. McDonough in trial preparation by lack of cooperation. Petitioner has no right to a perfect defense, but at least he should not put obstacles in his lawyer's path by holding back names of witnesses. Of course, Mr. McDonough did reach these "witnesses" and determined they were of no assistance to his defense.

In conclusion if there was any constitutional errors committed in this trial, I submit they were harmless beyond a reasonable doubt. Chapman v. California, 386 U.S. 18, 24 (1967). Witness after witness came to the stand and testified as to the relatively simple fact that Mr. Argentine came to the Hershey Travel Agency with a forged check, obtained airline tickets and took a trip to Florida. The elements of the crimes Mr. Argentine were convicted of were simple and proven even if we exclude Mr. Horton's testimony.

SUPPLEMENTAL AFFIDAVIT OF A. SETH GREENWALD

The trial, taken together with the fact it was the subject of an exhaustive coram nobis before Judge Gibbons, presents no constitutional problem.

WHEREFORE, your petitioner respectfully requests that the petition be denied.

A. Seth Greenwald

Sworn to before me this
27th day of June, 1974

Jene J. Fine
Assistant Attorney General
of the State of New York

AFFIDAVIT OF GENE BARRON DATED OCTOBER 1974.

STEPHEN P. SAPIENZA, as ATTORNEY FOR
ALFRED A. ARGENTINI

v>

74 C 193

LEON V. VINCENT, Warden, Greenwich
Correctional Facility

State Of New York }
County Of Suffolk }

F. I. E. D.
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

★ DEC 17 1974 ★

I, GENE BARRON, being duly sworn, deposes and says: A.M.
P.M.

Suffolk County, New York, the

1. That I am the owner of "Sunny - Yamaha" Motorcycles Co., of Route 109
West Babylon, New York;

2. That in the summer of 1963, my place of business was located on Sunrise
Highway, and at that time, for three (3) successive days, an individual
came into my place of business and was very insistent on finding the whereabouts
of a "LAW" MORTON;

3. That after speaking to this individual, I told him that if he caught up
to MORTON, before I did, I would appreciate it if he told MORTON that I also
would like to see him;

4. That in the month of January 1964, I was interviewed by a Mr. L. RIBAS,
Investigator for the Nassau County Public Defender's Office. I told the
Investigator that I did not know anyone named Argentini, but after the
Investigator gave me a description of the Person and his Automobile, I
remembered that he was the individual who had been in my place of business
for three (3) days in succession during the summer of 1963, looking for
MORTON, and that he was very insistent on finding MORTON;

AFFIDAVIT OF GENE BARRON DATED OCTOBER 1974

5. I have read the contents of this instant Affidavit and am signing
same of my own free will, without threat or promise of any reward.

Barbara GORDON 1974

Gene Baum

represented and seem to before me

on this 16 day of December, 1974.

Edwin

3646-56-1

2000 00 3 1000 M. 1000 195

17

AFFIDAVIT OF STEPHEN SAPIENZA.

STEPHEN P. SAPIENZA, as Attorney For
ALFRED A. ARGENTINE

vs
LEON J. VINCENT, Warden, Green Haven
Correctional Facility

I L E D
IN CLERK OFFICE
U. S. DISTRICT COURT E.D. N.Y. 3

★ DEC 17 1974 ★

TIME A.M.

STEPHEN P. SAPIENZA, being duly sworn deposes and says:

1. That he is an attorney at law duly admitted to practice in the State of New York.

2. That on or about the 29th day of January, 1974, he was retained by ALFRED ARGENTINE to represent him on a Federal Writ of Habeas Corpus.

3. That during the course of his subsequent investigation and preparation of said petition, it came to his attention that a petition for a Writ of Habeas Corpus had been heard by the Honorable Judge John S. Comble, County Court Justice, Wyoming County, during the months of June, 1969 to May of 1970 and that no decision had ever been rendered.

4. On or about February 16, 1974, your affiant did cause to call the Honorable Judge John S. Comble to inquire as to the present status of this matter.

5. Judge John S. Comble indicated the transcript of the notes of the hearings held during the months of March and April, 1970, had been lost or misplaced.

6. However, said judge indicated the original notes of the hearings which he had taken were still available and he would direct that they be resubmitted again and a decision would be forthcoming.

7. Thereafter, on or about March 25, 1974, and again in early April, 1974, your affiant travelled to the court house located in Warsaw, New York, and did confer with Judge John S. Comble.

8. On all times aforesaid, the judge promised an expedient and prompt decision.

9. Judge Comble said his main concern was that he wanted to make certain that if Wyoming County appealed his decision, it would not be upheld.

AFFIDAVIT OF STEPHEN SAPIENZA

1. Although a period of over five years has expired since the writ was issued, no decision has been rendered.

2. Therefore, your affiant in his petition before the U.S. Court for the Eastern District of New York argued that delayed and failure on the part of the County Court to render a decision constituted an exhaustion of available state remedy.

Stephen P. Sapienza

AFFIDAVIT OF GENE BARRON DATED NOVEMBER 6, 1974.

STEPHEN J. SARALEZA, as Attorney For
ALFRED A. ARGENTINE

14 C 193

LEON J. WENGER, Writer, Greenhaven
Contractor, Facility

I.E.D.
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

State Of New York }ss:
County Of Suffolk }

★ DEC 17 1974 ★

I, GENE BARRON, being duly sworn, depose and say:

1. That I am the Owner of Harley-Davidson, Inc., 613
Suffolk County Highway, Babylon, New York State;

2. That in the summer of 1963, said business was located on
Service Highway, and as stated in the previous affidavit submitted by me, I
met ALFRED ARGENTINE, at that time;

3. That in the months of July and August of 1974, I received
several telephone calls from an individual who identified himself as
ALFRED ARGENTINE, who explained to me that he was in the Federal Court
concerning his State Court Conviction for Burglary, placed against him
by an individual known to me as " LEW MORTON ";

4. That Mr. Argentine, asked if I remembered being questioned in
January 1964, by an Investigator from the Nassau County Public Defender's
office, about the amount of times Mr. Argentine, came to my place of business
during the summer of 1963, and also if I could remember the reason why Mr.

Argentine came to my place of business. I answered " Yes " to both
questions.

5. That during our telephone conversations, I agreed to furnish
any information that I had in my possession concerning Mr. MORTON, or the
individual that I knew who was using the name of " LEW MORTON ".

AFFIDAVIT OF GENE BARRON DATED NOVEMBER 6, 1974

6. That Mr. Argentine asked me if I ~~had~~ ever receiving any "Bad Checks" from Mr. HORTON. I answered "YES". That when Mr. Argentine asked if I could give him any particulars, I requested Mr. Argentine to give me some Twenty (20) Minutes time to check my records, and then call me back;

7. That when Mr. Argentine called me again, I told him that I have a record showing that I had received Two (2) "Bad Checks" from HORTON during the year of 1963. That one in the amount of Ten (\$10.00) Dollars was returned on July 19, 1963 drawn on the account of "LHM'S AUTO BODY" and that the other was in the amount of FIFTY (\$50.00) DOLLARS, dated July 23, 1963;

8. That I also told Mr. Argentine that I would be most happy to give him any other information that I could possibly furnish concerning the individual who uses the name "LHM HORTON";

Dated: October , 1974

Gene Barron
Gene Barron 8/3

Suscribed and sworn to before me
on this 6 day of Nov, 1974

Albert J. Caruso
SUFFOLK COUNTY

ALBERT J. CARUSO
NOTARY PUBLIC STATE OF NEW YORK
NU. 30-05334-0
QUALIFIED IN NASSAU COUNTY
CERTIFICATE FILED IN SUFFOLK COUNTY
TERM EXPIRES MARCH 30, 1975

SECOND AMENDED PETITION

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FEB 1 1975

UNITED STATES OF AMERICA
EX REL ALFRED A. ARGENTINE,

Civil Docket # 74 C 193

Relator,

-against-

SECOND AMENDED PETITION

LEON J. VINCENT, Warden
Free Haven Correctional
Facility,

Respondent.

TO THE HONORABLE UNITED STATES DISTRICT COURT FOR THE EASTERN
DISTRICT OF NEW YORK:

The Relator herein, ALFRED A. ARGENTINE, as
and for the Second Amended Petition in this proceeding,
respectfully alleges:

1. That he is unlawfully detained and restrained
of his liberties by the Respondent, LEON J. VINCENT, the
Warden of Green Haven Correctional Facility at Stormville,
New York, by virtue of a sentence imposed on Relator by the
Honorable Paul Kelly, a Judge of the County Court, Nassau
County, State of New York, on September 25, 1964, nun pro tunc
as of March 18, 1964, following Argentine's conviction of the
crimes of forgery in the second degree (two counts) and grand
larceny on January 28, 1964, in said Court.

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2. That he has exhausted all state remedies as required by 28 U.S.C. Section 2254:

(a) Direct Appeal. Relator served and filed a Notice of Appeal from the judgment referred to in 1 above, to the Appellate Division, Second Department of the Supreme Court of the State of New York on March 18, 1964. Relator successfully moved to proceed as a poor person and requirement that his brief be printed was waived. The appeal was dismissed on the Court's own motion on October 3, 1966 for failure to prosecute. This failure to prosecute was caused by numerous delays and impediments which the Relator met in attempting to correct alleged errors in the trial record and to secure a complete and accurate copy of the same, which he never received. Thereafter, Defendant did apply for leave to appeal to the Court of Appeals from Order of the Appellate Division dismissing his appeal. The application was denied by the Court of Appeals on October 16, 1967 by the Honorable Stanely Fuld.

(b) (i). Coram Nobis. Subsequently Relator moved for a Writ of Error Coram Nobis, claiming he was denied the right to counsel of his own choosing and the right to proceed pro se. This writ was heard by Judge Kelly who denied it on December 31, 1969. On October 9, 1970, the Appellate Division, Second Department, reversed the decision of Judge

SECOND AMENDED PETITION

Kelly and remanded the Petition to the County Court for a hearing. A hearing was held before the Honorable David T. Gibbons, a Judge of the County Court, Nassau County, State of New York, who denied the petition on July 21, 1971. No further appeal was taken by the Defendant from this decision.

(ii) In or about October, 1973, Relator applied for a Writ of Error Coram Nobis in the County Court, Nassau County. It was denied on October 10, 1973. Reargument was granted and the denial adhered to on November 16, 1973 and leave to appeal to the Appellate Division was denied on January 31, 1974. No further relief is available. In his application, Relator alleged that an important prosecution witness gave false material testimony and that this was known to the prosecution, that newly discovered evidence uncovered since the trial, if available and introduced at the trial, probably would have changed the result and that Relator had improperly been denied the right to subpoena and call witnesses in his defense.

(c) Habeas Corpus. On June 9, 1969, Relator petitioned for a Writ of Habeas Corpus. Hearings were held before the Honorable Judge John S. Conable in Wyoming County, New York. The Petition therein alleged perjured testimony by a state witness, prejudicial pre-trial publicity, denial of the right to proceed pro-se, denial of compulsory process

SECOND AMENDED PETITION

to obtain witnesses and denial of a change of venue all in violation of defendant's rights. The hearings were completed on or about April 13, 1970 and the Court reserved decision. No decision has been made and because of the time delay as well as what appears to have been the loss of his trial record, he has either exhausted this remedy or this remedy appears to be one which the Relator has pursued as far as he can.

Indeed, Relator has been effectively denied an effective appeal from his conviction and with respect to post-conviction remedies in the state court by virtue of the foregoing and in view of the factual and legal issues raised herein, he should be granted a hearing by and before this court.

3. Basic Facts and Chronology Relating to Conviction.

(a) Relator was indicted on October 1, 1963, by a grand jury for allegedly committing the crimes of forgery in the second degree (2 counts) and grand larceny second degree on August 1, 1963. This indictment was numbered 19147. Prior to and contemporaneous with this indictment which is the subject of this Petition, Relator had three other indictments pending against him. Relator pleaded not guilty on October 7, 1963 and Daniel T. Sullivan, Esq., The Public Defender, was assigned as Counsel.

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(b) On December 9, 1963, the Court granted permission to Harry Kutner, Esq., who appeared on that date as retained counsel for purpose of setting bail, to withdraw and the Public Defender was assigned as counsel on #19147 and the three other indictments and trial date of December 16th was set.

(c) On December 16, 1963, James J. McDonough, Esq., Public Defender, asked to be relieved because of defendant's objections to him, defendant's desire to retain counsel and serious misgivings that Mr. McDonough could effectively defend the Relator because of an increasingly hostile relationship. Relator had prepared motion papers presented to the Court setting forth the foregoing and also noting the Public Defender's refusal to obtain witnesses that Relator believed would aid his defense. The motions were denied. There was no trial on that date.

(d) Between December 16, 1963 and January 6, 1964, defendant tried to obtain retained counsel and to have the Public Defender relieved.

(e) On January 6, 1964, despite defendant's request for an adjournment to permit a Mr. Winters, who was otherwise engaged, to represent him, the Court refused the request and proceeded to trial before Judge Kelly. On January 7, a mistrial was declared because of prejudicial newspaper publicity and defendant was remanded pending trial, subject to a motion to be made by the Public Defender for a change of venue.

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(f) On January 20, 1964, a second trial on indictment #19147 began. Mr. McDonough again asked to be relieved and Relator again indicated his desire to retain counsel. It also appears that he asked to represent himself pro se. While the record of trial does not show this request, Judge Kelly, in an opinion denying the Writ of Error Coram Nobis (See 4 (b) (ii, supra), refers to the request being made on the "eve of trial" and Relator has claimed consistently that record of trial was incomplete and inaccurate. These requests were denied. The Court based its denial in substantial part on what he had been told by a Judge Goldstein concerning Relator's constant and persistent efforts to have Mr. McDonough relieved in other cases; the Court never afforded Relator the opportunity to refute these remarks allegedly made by Judge Goldstein concerning the facts and their characterization by Judges Kelly and Goldstein.

(g) On January 20, the day the second trial commenced, Relator sought a change of venue. His counsel, Mr. McDonough, refused to do so stating he doubted the presence of adequate grounds despite defendant's request to (See (e) above) so move. The motion by Relator pro se was denied on the grounds that he was making it in the wrong forum and gratuitously on the merits as well. Relator claimed and it is here also alleged, that the prejudicial effect of publicity which only thirteen days previous had caused a mistrial and moved the Court to threaten contempt proceedings against a news-

SECOND AMENDED PETITION

paper, had not yet been dissipated and, in fact, there was further publicity in the interim.

(h) Throughout the trial, defendant moved or McDonough moved or both moved to relieve Mr. McDonough as counsel and on January 27, the record shows defendant again requested that he be permitted to present his defense and proceed pro se. In addition, on January 28, 1964, Relator requested that certain potential witnesses be subpoenaed. Mr. McDonough opposed defendant's position stating he had doubts about the admissibility or helpfulness of their testimony.

(i) Defendant was convicted on all counts on January 28, 1964. On March 13, 1964, when defendant appeared for sentencing and to determine his prior felony offender status, Mr. McDonough finally was relieved and defendant permitted to proceed pro se with the assistance of Donald Goldman, Esq., assigned counsel.

4. Relator is restrained and imprisoned pursuant to a proceeding and judgment which is illegal and void because it was obtained in violation of rights guaranteed to Relator by the Fourteenth Amendment of the Constitution of the United States. More specifically, Relator was denied the right to defend himself pro se, the right to effective assistance of counsel, as an indigent the right to the same

SECOND AMENDED PETITION

representation by counsel as would be afforded a non-indigent, a trial free from prejudicial pre-trial publicity, the right to compel witnesses to attend and testify as part of his defense, the right to effectively confront witnesses against him during the trial and in the course of deciding pre-trial motions and a trial free from perjury known to the prosecution. The facts and circumstances supporting the conclusion that Relator was denied these rights are set forth below.

Denials of Rights with Respect to Assistance of Counsel and the Right to Proceed Pro Se.

5. In basic terms, the pre-trial and trial events involving Relator and his assigned counsel resulted in each of them recognizing throughout that Mr. McDonough, the Public Defender who served as assigned counsel, would be unable to effectively assist Relator. Although this repeatedly was made known to the Court, the Court would afford no remedy either by way of assigning other counsel, affording sufficient opportunity to obtain counsel of Relator's choice or to proceed pro se. The relationship between the two deteriorated to such a point that Mr. McDonough in presenting motions and requests for relief by defendant would disparage or oppose them. By way of example, Mr. McDonough opposed and would not aid defendant's efforts to obtain a change of venue as set forth in 3 (g) supra. He also stated his

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belief in the lack of merit in defendant's application to have witnesses subpoenaed in his behalf (See 3(h) supra). The essence of this denial can be best understood in the light of instructions given to Assigned Appellate Defense Counsel in the Second Department which states a principle surely applicable to assigned trial counsel:

It should be emphasized that with respect to this appeal, the appellant is your client and he should be treated as such. Under the law, you may neither reject his cause nor be relieved of your assignment, since the appellant has the absolute, unqualified right to prosecute his appeal to this Court regardless of your opinion as to its merit. Therefore, under no circumstances, should you disparage, either to him or to this court, the validity of any point asserted on his behalf, regardless of your personal feelings; nor should you give any intimation that you lack faith in the merit of his appeal. It is for this court to determine whether any of the points submitted is valid, and whether it is sufficient to warrant reversal or modification. Of course, as already indicated, in your brief you may enumerate separately those points which you are urging upon appellant's insistence or at his suggestion.

In connection with all of the foregoing, your attention is directed to Canons 1 and 4 of the Canons of Professional Ethics. (Emphasis supplied).

At the very least, Relator's requests which had merit and surely were not clearly without merit should have been presented without adverse comment by counsel and, even more importantly, the meritorious aspects should have been urged.

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Instead, counsel presented them in the manner aforesaid and consistently gave the Court the impression he was unduly burdened by Relator's aggressiveness in his own behalf to a Court which had developed and stated its sympathy for counsel who he had compelled to serve. Under the circumstances set forth herein, the failure to relieve counsel resulted in serious prejudice to defendant's constitutional rights. He was also denied the right to proceed pro se as is set forth in Paragraph 3 (f) & (h) supra. A more detailed statement of the circumstances follows:

(a) The Relator herein, Alfred A. Argentine, was indicted by the Grand Jury of Nassau County on October 1, 1963. On October 7, 1963, before the Honorable Judge Oppido in Nassau County, the Public Defender (Legal Aid) who was assigned to represent the Defendant entered a plea of not guilty on the Defendant's behalf.

(b) On October 29, 1963, Mr. James McDonough visits the Defendant for the first time. Although complaining of a beating suffered at the hands of prison officials, Mr. McDonough was unmoved and after a brief interview left after being told by the Defendant he didn't want his services.

(c) That very afternoon (October 29), Mr. McDonough asked Judge Oppido for an Order directing a psychiatric examination of the Defendant (Pages 6-8 of the trial Record).

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(d) Subsequent to this date, no further action was taken on the part of Mr. McDonough until December 14, 1963, when he appeared at the jail to complain of Defendant's act in having a Mr. Kutner, Esq., make application for bail two days earlier.

(e) Mr. McDonough also advised the Defendant that he should take a plea inasmuch as several indictments were pending and any one of them would carry with it substantial jail time.

All of this was done without any preliminary investigation or research into the case.

(f) The next date of importance in this indictment was January 4, 1964 when Mr. McDonough visited the Defendant for the third time to inquire as to whether Mr. Winters, Esq. had been retained, the Defendant answering in the affirmative.

Then on January 6, 1964, before Judge Paul Kelly, County Court, Mr. McDonough moved for an adjournment on behalf of Mr. Winters who he, Mr. McDonough, had spoken to and who said he would appear for the Defendant.

(g) Judge Kelly who had had no previous requests for an adjournment or for change of counsel denied the motion on the basis of another Judge's hearsay story of his experience with the Defendant on other indictments.

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Mr. McDonough then requested that he be relieved from this assignment. This was denied. The defendant then requested the judge to disqualify himself and this, too was denied.

(h) On January 7, 1964, because of pre-trial publicity, Judge Kelly on the motion of the Defendant declared a mistrial.

During the proceedings of January 7, Mr. McDonough made an oral request for change of venue but unfortunately never followed through with a written request and hence never obtained a ruling by Judge Kelly or in any other forum.

(i) For approximately the next ten (10) days the newspapers and radio and news broadcasts continued to carry stories of your Relator's plight.

(j) On January 20, 1964, a new trial resumed before Judge Paul Kelly. Mr. James McDonough was still counsel and again a written request was read into the record to permit the Defendant to secure counsel of his own choice, and for dismissal of Mr. James McDonough. The latter request being supported by Mr. McDonough.

The Court again denied these motions on the basis of what had been said by Judge Goldstein concerning another separate and distinct indictment (Pages 36-38 of Trial Record).

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(k) Through the balance of this trial the Defendant was to make numerous motions relating to a stay to permit Defendant to appeal the Court's denial of a motion for a change of venue and requests that the judge disqualify himself, complaints of abuses by prison officials and a request to have certain witnesses appear in his behalf.

(l) When the last of these motions regarding defense witnesses was read in open court, Mr. McDonough opposed said request and after the court denied it the Defendant repeated his request that he be permitted to proceed pro se and Mr. McDonough requested he be relieved of his assignment. All of which were denied.

Based upon the foregoing, Relator claims he was denied his constitutional rights under the Fourteenth and Sixth Amendments to proceed pro se and to have effective and meaningful assistance of counsel. Further, the failure to present and develop the facts concerning the merits as set forth herein after, is further evidence of the insufficiency of the representation.

Denial of Compulsory Process:

6. The gravamen of the charges in the indictment which is the subject of this Petition was that Relator allegedly gave a check to a travel agency in exchange for some airline tickets to Florida; the defendant allegedly forged the drawer's

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name (Horton) before entering the travel agency store and filled in the amounts in front of a clerk (Wartenberg). The check bounced; but in the meantime it was claimed the defendant had gone to Florida with a woman.

A significant part of the prosecution's case depended on the credibility and memory of the witnesses. Relator wished to subpoena certain witnesses who would testify to (1) That the procedure Wartenberg testified to as having been followed

See memorandum of L. Rodau, dated January 27, 1964 and attached hereto marked Exhibit "A" wherein he states that Miss Milo (a/k/a Mary Ann Migliaccio) "admits that Lou Horton called to prepare the way for Argentine's coming to see her in regard to making book." And that she further stated "Horton had a collision shop somewhere in Lindenhurst and that Argentine used to hang out there and she was aware that Horton and he did business together."

Your petitioner asserts that in light of the foregoing statement, the denial of Relator's constitutional right to call this witness severely jeopardized his defense.

(b) Nancy Romandette testified that Alfred A. Argentine, Relator herein, told her Bert Solomkin was going on the trip to Florida with them. (Pages 216-217 Record of Trial; dated January 23, 1964, Romandette-direct). The defendant, Relator herein, requested the Court to permit the

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calling of Mr. Bert Solomkin on his behalf. It was believed at that time, as it is now, that his testimony would have directly contradicted that of Nancy Romandette and that together with the testimony of Mr. Robert Brunner the credibility of this witness would have been seriously damaged if not totally disbelieved.

(c) Jeffrey Wartenberg testified as follows:

"ANSWER": I questioned the check when I got it with the Manager of the Hershey Travel Agency.

QUESTION: Who is he?

ANSWER: Martin Dreiwitz. I questioned it because an autobody check--if you have any experience handling checks, body shops and builders, contractors usually should be checked. And he said, "Well, as long as it is a local check, it is our policy to pass on it, and without any question which I did."

(Page 128 Record of Trial, dated January 1, 1964, Wartenberg-direct; beginning on Line 1 to line 9)

And on cross-examination Wartenberg again stated:

"QUESTION: Well, before you ask anybody, did you ask this Defendant, or his companion for any sort of identification at all?

ANSWER: No I did not.

QUESTION: And then you went to some superior and on that basis you accepted this check?

ANSWER: That's correct."

(Page 151 Record of Trial, dated January 21, 1964, Wartenberg-Cross-Examination line 11-line 17).

This testimony should be compared with the statement given to the Public Defender's investigator, Mr. L. Rodau (Exhibit "A" under No.1 Martin Dreiwitz). Had Mr. Dreiwitz

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been called to testify as the Defendant requested, it is apparent from this memorandum that he would have said "If it is after hours the clerk is supposed to ask Mr. Dreiwitz for (sic) but in this case Mr. Dreiwitz did not authorize cashing of the check nor is he aware that anyone had authorized the cashing of the check."

Such a line of testimony by Mr. Dreiwitz would have aided the defense immeasurably inasmuch as Jeffrey Wartenberg was the only person who observed the alleged "uttering" of the check. This issue was presented to the Honorable Frank X. Altimari, in the Relator's Petition for Writ of Error Coram Nobis. Said Writ was denied without the Court ever considering the issue of compulsory process to call witnesses. The Honorable Judge Frank X. Altimari stated that this issue was not one reviewable in a Writ of Error Coram Nobis but should have been part of the direct appeal.

Your petitioner asserts that said issue is a proper subject of an evidentiary hearing by this court and that the error complained of is of such constitutional proportions as to mandate a new trial.

Denial of Right of Confrontation and Suppression of Information.

6. Relator was denied the right of confrontation in three respects and in the last two, the People suppressed or failed to reveal information of an exculpatory nature:

(1) When he asked for an adjournment in order to obtain counsel, Judge Kelly based his decision on out-of-court statements of Judge Goldstein, which, (a) were not made known to

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defendant or his attorney, and (b) which defendant would have sought to rebut if given the opportunity. That these statements played a material part in Judge Kelly's decision cannot be doubted because it left the Judge with the erroneous impression that the trial of Indictment #19147 had been unduly delayed by defendant. This was a material error which led to defendant having to go to trial with counsel he did not want and who did not want him;

(2) A second instance of denial of the right of confrontation occurred with respect to one of the State's main witnesses, Horton, whose signature was alleged to have been forged. It should be borne in mind that no one testified that Relator signed the check. This could only be inferred from Horton's denial that he had signed it in order to pay Relator for a debt due Relator and that because Relator allegedly filled in the amount in front of Wartenberg. In this connection, the fact Horton had issued bad checks to one, Barron, See Exhibit D and paragraph 6 (c) herein.

(a) Lewis H. Lippens presented himself before the Grand Jury as well as before Judge Kelly and the 12 jurors that sat in judgment of the Relator herein under the guise and alias of Lewis Horton.

(b) Use of the name Horton, whether or not it is believed to have been intentional or without malicious intent resulted in the defendant being unable to discover and use

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information such as that contained in the witness' record of conviction of said witness to attack the credibility of the witness and rebut his testimony (Exhibit E)

The use of the alias, Lewis Horton, by the state's complaining witness although not a complete denial of the defendant's right to cross-examine the witness was an obstacle to defendant discovering the witness' record of conviction which could not be circumvented and therefore he was unable to expose Lewis H. Lippens' perjury concerning his previous convictions which would have a serious bearing on his credibility which was in issue.

To require cross-examination without knowledge of the witness' true identity being known is to effectively destroy the very purpose of cross-examination. In this case it is particularly significant, because credibility was a decisive factor in the result.

This issue was raised in Relator's Writ of Error Coram Nobis before the Honorable Frank X. Altimari and was denied on the basis that further proof of other convictions was not such a denial of Defendant's right that it required a new trial or reversal.

(3) During the trial, Jeffrey Wartenberg testified that he was the clerk in duty at the travel agency when Argentine allegedly presented the check to pay for the airline tickets. He

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claimed he saw Argentine fill in the amounts on a check where Horton's signature appeared as drawer. As set forth in 5 (c), supra he lied about Dreiwitz' presence. He further lied about Argentine being accompanied by Solomkin or Brunner and lied again about not having received identification that Argentine was presenting the check. With respect to the last point, see Page 128 of the Record of Trial(5 (c), supra) and People's Exhibit 8 therein. The latter is annexed hereto as Exhibit C and shows that the travel reservation form contains Argentine's name and a licence number.

Relator knows that Wartenberg, only four months later, was charged and believes he was convicted of stealing liquor from his liquor store employer and believes he was under investigation by the Nassau County Police at the time he testified. This information was never given to Relator or his attorney and that fact bearing on credibility plus, there was potential that Wartenberg by virtue thereof was under pressure to give testimony favorable to the prosecution, would have materially aided the defense.

The Use of Perjured Testimony

7. There was perjury on the part of Lewis H. Lippins a/k/a Lewis Horton in several respects.

SECOND AMENDED PETITION

(a) The trial minutes show:

Question: Now, you told Mr. Marchese that you had been arrested several times. I believe you stated in connection with motor vehicle traffic violations?

Answer: This is correct.

Question: And also for bad checks?

Answer: No:
(page 93-94 Record of Trial: dated January 20, 1964: Horton-cross).

Said witness did also further testify later on page 94:

Answer: Was I convicted of a crime? No I usually made restitution and then they would forget about it.

And then again on Page 95 of the Record of Trial dated January 20, 1964 said witness did testify as follows:

Answer: Yes was I ever arrested on more than one occasion.
Yes two.

Question: Two occasions?

Answer: Yes using the name Lewis Horton or Lou's Auto Body which is my signature on Lou Horton.

Question: Right, and I think you said, as Mr Marchese was talking, that you made restitution.

Answer: Yes I cleared the matter up before it went to court or in the courtroom itself before there was any crime or anything.

Question : And the complaint was withdrawn?

Answer: Of course.

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The above is only representative of a long line of direct and cross-examination in which the complaining witness did perjure himself and attempt to falsify his prior record and conduct. (See Exhibit B.)

This perjury although not bearing directly on the issue of the guilt or innocence of the Relator affects the credibility of one of the state's complaining witnesses and was a matter which the jury should have and was entitled to consider when evaluating his testimony.

(b) Your Petitioner respectfully requests that this Court bear in mind the facts brought out under paragraph 5, supra; above wherein Relator shows how Defendant was further injured by not being permitted to present the testimony of Miss Mile t, refute other statements made by this witness.

These false statements were knowingly presented to stand even though the state through the Office of District Attorney had or should have had this witness' true name as well as his arrest record inasmuch as the District Attorney's Office prosecuted several of these informations.

Petitioner claims that this issue has been properly brought before this court and that the Relator has exhausted his state remedies by a Writ of Error Coram Nobis brought before the Hon. Frank X. Altimari, Nassau County Judge, who denied the relief requested based on the fact that (1) the

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Petitioner, Relator herein, had not acted promptly when he finally discovered the perjured testimony and (2) the fact that although the complaining witness had not stated all the crimes of which he was convicted and all the aliases under which he acted, the crimes not revealed were insufficient for a reversal of the conviction.

It is your Petitioner's contention that this decision disregards the fact that it is not the job of the court to determine the relative weight to be given to the evidence which was held back from the jury by the witness. It is further asserted that the Honorable Judge Frank X. Altimari did, in his conclusion as to what the facts substantiated ("It was merely a single conviction more than 10 years old that was suppressed from the knowledge of the jury"), was in error. See the attached Record of Conviction of Lewis Horton (Exhibit B).

(c) There was further false testimony by Horton. For the sole purpose of seeking to unduly prejudice the jury, the People introduced Horton's testimony that he had been "chasing" Argentine for a bad check (Record Page 89). This was false and the facts are that Argentine, during that time, had been looking for Horton as the attached affidavits of Barron Exhibit A, Paragraph 3, and (Exhibit D) show. Further,

SECOND AMENDED PETITION

Barron's affidavit (Exhibit E) shows that it was Horton who was issuing bad checks from his business account. These facts further support the prejudicial manner in which the defense was conducted and the way the prosecution's case was presented.

Denial of Trial Free of Pre-TrialPrejudicial Publicity

8. The facts concerning this contention are set forth in the basic facts section of this petition and the section dealing with right to counsel.

Relator is entitled to a hearing on the Allegations in this Petition having been denied same as well as a complete and adequate appeal in the state courts and where there was a hearing, findings were clearly erroneous.

9. The facts set forth in paragraph 2, above, establish the denial of hearing (See Exhibit F) and appeal rights and the remainder of this Petition requires both a hearing on this Petition and rejection of whatever findings were made in the state court.

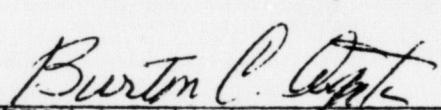
WHEREFORE, the Relator prays this Court to issue its Writ of Habeas Corpus addressed to Sheriff of Wyoming County, State of New York, directing him to have the Relator herein, ALFRED A. ARGENTINE, returned to this jurisdiction and brought before this Court forthwith and that at that time the Relator herein be discharged from further custody. The Petitioner further prays that all proceed-

SECOND AMENDED PETITION

ings in the County Court of Wyoming, State of New York, be stayed pending the hearing and determination of this Petition. The Petitioner further asks the Court to admit the Relator herein to bail pending the hearing on this Petition and that the Court fix the amount of such bail and that on furnishing bail to the Clerk of this Court that the Relator herein, ALFRED A. ARGENTINE, be released until final determination of this cause.

Dated: New York, New York
February 14, 1975


ALFRED A. ARGENTINE, Petitioner


BURTON C. AGATA
REISCH, KLAR & LANE, P.C.
Attorneys for Petitioner
1501 Franklin Avenue
Mineola, New York 11501
(516) 742-4949

SECOND AMENDED PETITION

STATE OF NEW YORK)
ss.:
COUNTY OF NEW YORK)

ALFRED A. ARGENTINE, being duly sworn, deposes and says, that he is the Petitioner of the foregoing Second Amended Petition for Writ of Habeas Corpus; that he has read the foregoing Amended Petition and knows the contents thereof; that the same is true to his knowledge of the deponent, except as to the matters therein stated to be alleged on information and belief, and that as to those matters, he believes it to be true.

Sworn to before me this
14th day of February, 1975

Alfred A. Argentine

Stephen P. Sapienza

NOTARY PUBLIC

County of ERIE, STATE OF NEW YORK
My Commission expires 3/30/76.

EXHIBIT A, ANNEXED TO SECOND AMENDED PETITION.

MEMORANDUM

TO: MR. McDONOUGH
FROM: L. RODAU

RE: ARGENTINI-INVESTIGATION
of witnesses Friday and
Saturday, January 24 and
25, 1964.

1. Martin Dreiwitz

Manager of the Hershey Travel Agency, Freeport, New York.

Interviewed on the afternoon of January 24th and stated that he knows nothing at all about this matter. He does not know Argentini either by sight or by name and he never heard the name "Horton" until this incident with the check. The normal procedure on receiving checks is that if it is on a local bank and during banking hours, they do not question the client at all but go in the back and quietly call the bank to verify the credit. If it is after hours, the clerk is supposed to ask Mr. Dreiwitz for authorization, but in this case Mr. Dreiwitz did not authorize cashing of the check nor is he aware that anyone had authorized the cashing of the check. They have no standard procedure for looking at automobile licenses or other identification and evidently their rules for cashing checks are very lax. The man who waited on Argentini was Wartenberg. He did not have travel agency experience before and has since left Hershey. Mr. Dreiwitz went on to say that if he showed any recognition to Argentini, nodded to him or said "hello", this was merely in his capacity as a salesman. He said that he is a "professional salesman" and part of his job is to greet and be pleasant to prospective clients.

2. Anthony Rossi

I located Napoli Drive in Wyandanch and upon checking same found that it was occupied by only two houses, one owned by a colored family and another by a white family. Neither family

121a

EXHIBIT A, ANNEXED TO SECOND AMENDED PETITION

knew Rossi. I made inquiries with the local police, neighbors, post office, all to no avail. I checked the local school board and Mrs. Sheehan, clerk at the school, checked all the local schools for children of that name, with negative results. I then proceeded to Deer Park in the vicinity of Jordans Restaurant and checked out several luncheonettes in the vicinity in an effort to locate Rossi. Results were negative. I discontinued this branch of the investigation.

3. Island Bike Shop

I found that the correct name for the above is the Suffolk County Harley-Davidson Motorcycle Co., and that they moved from Sunrise Highway to Route 109 in West Babylon. I interviewed the owner there who gave his name as Gene Barron (phonetic spelling) who acknowledged they know Horton, as Horton had done some painting for him on motor cycles. He disclaimed all knowledge of Argentini but did say that he recognized my description of him and his car and the reason he recalled it to mind was that for three days in succession in the summer, Argentini came looking for Horton and was very insistent on finding him. No one else in the place knew Argentini.

4. Milo ? ?

The above named female was given as the proprietor of a beauty parlor and a possible witness for Argentini. I discovered her true name to be Mary Ann Migliacco. This subject is living at 1006 Tooker Avenue, West Babylon with her two children. She is separated from her husband and uses the above name, which is her maiden name. At first she refused her name and all information in regard to the case we are investigating. However, after considerable discussion with her and her mother, I learned that she had been active in Darlene's Hair Stylists at 91 Carleton Avenue, Islip Terrace. She had some kind of interest in the business, as did her mother. The business had failed about six months ago. The subject styled herself as Manager of the beauty parlor and claims that Argentini never made book on

EXHIBIT A, ANNEXED TO SECOND AMENDED PETITION

her premises, although she admits that Lew Horton called to prepare the way for Argentini's coming to see her in regard to making book. At that time, her shop was doing poorly and she might have entertained the idea, although she denies she ever entered into any agreement. She went on to state that Horton had a collision shop somewhere in Lindenhurst and that Argentini used to hang out there and she was aware that Horton and he did business together. She would not, or could not, state that it was bookmaking but she was positive of the fact that they knew each other well. Argentini stated to her that he was doing bookmaking with Lew Horton. Horton never told her in so many words that Argentini was bookmaking at his body shop, but he intimated same. She never saw the operation herself. It is my estimation that Lew Horton has either got the Migliaccio family under his thumb because of indebtedness or fear of him. I subpoenaed Mary Ann Migliaccio along with a fee of \$2.00 at her home. Subsequently, I contacted her at her home phone number (M01-6739) and informed her that she was to be at our office at 1:30 p.m. this date to discuss the matter. She is afraid of confronting Horton and I understand that he is to be on the stand before her.

January 27, 1964

LR/eb

EXHIBIT B, ANNEXED TO SECOND AMENDED PETITION.

This certifies that fingerprints of the following named subject have been compared and the following is a true copy of the records of this system.

Robert R. J. Gallati

DIRECTOR

NYSIS NO. 437649X WM 5 11 1/2 1935 -1-

CONTRIBUTORS OF FINGERPRINTS	NAME AND NUMBER	ARRESTED OR RECEIVED	CHARGE	DISPOSITION
PD Los Angeles Calif. (rep by Wash Bur)	Lewis Norton #4655 W 8	5-22-51	Susp 487.1 PC (Grand Theft-Merchandise)	
SO Riverhead, NY	Lewis Norton #7774	10-13-52	Pet Larc.	120 das Co Jail
SC FD 105 Pet 376	Lewis Norton Lippens #381626	7-25-56	Cr Larc. (checks)	2-14-57 Dismissed
SO Mineola, NY	Lewis Norton Lippens #571170	4-8-58	1-12-4 2-56-4 VTL	1.2 das or \$10 2.20 das, or \$100 Sent to full conc
SO East Meadow, NY	Lewis Norton Lippens #571170	8-4-58	20-4A VTL	8-19-58 90 das and \$200
PD Mineola, NY	Lewis Norton #28932	4-25-60	Sec. 1292-A PL (fraudulent check)	4-25-60 Nassau Co. Dismissed

EXHIBIT B, ANNEXED TO SECOND AMENDED PETITION

This certifies that fingerprints of the following named subject have been compared and the following is a true copy of the records of this system.

Robert R. J. Gallat

DIRECTOR

NYSIS NO. 437649X WM 5 11 1/2 1935 -2-

CONTRIBUTORS OF FINGERPRINTS	NAME AND NUMBER	ARRESTED OR RECEIVED	CHARGE	DISPOSITION
D Mineola, NY	Lewis Horton #28882	6-30-60	Sec. 240 PL Secreting Mortgage Property. Final: Sec. Mort. Prop. & Fraud Chk)	7-12-60 (1) dism. (2) S/S Restitution
D East Meadow, NY	Lewis Horton al-Lewis Lippins #571170	10-4-60	1163 VIL (Failed to signal right turn)	10-5-60 3 das or \$15
D Mineola, NY	Lewis Horton al-Louis Lippins Lewis Horton Lippins #28882	11-27-62	Sec. 1292A PL Fraud Check	11-30-62 PQ S/S Restitution
D Hauppauge, NY	Lewis Horton IB 5208	5-5-64	Fraudulent check	7-30-65 Civil compromise
D Hauppauge, NY	Lewis Horton IB 5208	6-29-64	Bigamy	9-24-65-Convicted PQ as charged, SS 2 1/2-5 yrs. \$5
PD Hauppauge, NY	Lewis Horton al-C. Nolan al-Roger James al-Andrew L. Grimm #5208	1-21-65	Forgery 2nd-837-2	Same as above

*Represents subjects unsupported by fingerprints in our files.

copied by cp

Please advise if we can be of any further assistance to you in this matter.

EXHIBIT B, ANNEXED TO SECOND AMENDED PETITION

This certifies that fingerprints of the following named subject have been compared and are found to be a copy of the records of this system.

Robert R. J. Gallat

DIRECTOR

C. I. NO. 1437649X WM 5 11 1/2 1935 Page 3

CONTRIBUTORS OF FINGERPRINTS	NAME AND NUMBER	ARRESTED OR RECEIVED	CHARGE	DISPOSITION
Riverhead NY	Lewis Norton 7774	1-21-65	Forgery 2nd	
Hauppauge NY	Lewis Simms 5203	7-24-67	Poss Weapons & Dang Instr	9-17-68. Pd. Glity. as chrg. 5 cts. /d.j. 2nd, 1 Off. Sent. to Max, 1/2 yrs; Min. 3/4 yrs. Credit for time served.
Riverhead NY	Lewis Simms al-Lewis Norton al-Lewis Lippens 16299	12-3-67	PL 130.20 Sex. Miscon.	
Hauppauge NY	Lewis Simms 5203 al-Lewis Norton al-Charles Nolan al-Roger James al-Andrew Leo Grimm	12-3-67	PL 130.20-1 A Misd Sexual Misconduct	

Represents notations unsupported by fingerprints in D. C. I. files.
We advise if we can be of any further assistance to you in this matter.

js

EXHIBIT B, ANNEXED TO SECOND AMENDED PETITION

This certifies that fingerprints of the following named subject have been compared and the following is a true copy of the records of this system.

Robert R. J. Gallate

DIRECTOR

NYSIIS NO. 437649X W M 5 11½ 1935

CONTRIBUTORS OF FINGERPRINTS	NAME AND NUMBER	ARRESTED OR RECEIVED	CHARGE	DISPOSITION
PD Hauppauge NY	Lewis Horton al-Charles Nolan al-Charles Davis al-Roger James al-Albert Grant IB 5208	4-3-68	PL 155.40 C Fel Gr Larc 1st	
Sing Sing Prison Ossining NY	Lewis Sienna 142005 Lewis Horton	Recd. 9-18-68	Vd: Poss of Weapons and Dang Inst & App Fel-5 counts	3-6/4-6 each count concurrent

*Represents accusations unsupported by fingerprints in our files.
Please advise if we can be of any further assistance to you in this matter.

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EXHIBIT C, ANNEXED TO SECOND AMENDED PETITION.

MINEOLA, NEW YORK

WILLIAM CAHN
DISTRICT ATTORNEY

TELEPHONE PIONEER 2-1800

December 20th, 1967

Alfred A. Argentine 19875
Box 149
Attica, New York

Dear Sir:-

We are in receipt of a letter from William Bardes, Chief Clerk of the County Court as the result of which we are enclosing a Xerox copy of Peoples' Exhibit #8 in evidence in connection with the trial of the above-numbered Indictment.

DEC 22 1967

Very truly yours,

WILLIAM CAHN
DISTRICT ATTORNEY

Donald X. Clavin
DONALD X. CLAVIN
ASSISTANT DISTRICT ATTORNEY

DXC:pg
Enc.

EXHIBIT C, ANNEXED TO SECOND AMENDED PETITION

MERSHY BLDG.
35A So. Grove Street
Freeport, N. Y.
FReepor 8-5300

Reservation Request No. _____

ORIGINAL
To be Presented by Guest
Upon Arrival

162-10 Jamaica Avenue
Jamaica 2, L. I., N. Y.
JAmalra 6-6800
AXtel 7-5300

Reservation Order Issued
From **Filler** _____

The Following Reservations Have Been Confirmed. Please Honor Upon Presentation.

McAllister Hotel, Miami Florida

From: Aug. 1st, 1963 To: Aug. 4th, 1963

Rate \$14.00 per day

For The Account Of Mr. & Mrs. Louis Norton

PERSONAL SERVICE FOR WORLD TRAVEL

Note: Please collect all charges directly from clients prior to their parture.

REMARKS

Conf. N.Y., N.Y. by Mrs. Bimack.
LMB EP w/ \$14.00 per day.
8/1/63

At times it may be necessary for guests holding reservations in the hotel itself to be assigned to temporary accommodations.

EXHIBIT C, ANNEXED TO SECOND AMENDED PETITION

HERSHY TRAVEL AGENCY

Jamaica
 Freeport

Date 8/1/63

name Mr. & Mrs. HORTON (G-HADYS), R. BROWDER
 Address 186 E. Greenwood Ave.
 by BUS STATION (Bus)
 one 106-6920 CE 4-8795
 arrested in 10/7/1963

return 8/1 11:00 AM
 date of Departure 8/1 11:00 AM
 date of Return OPEN

AC GRANTIN
 Arthur Grantin
 84 General
 4th Ave
 6th St
 10th St

Pd in full 8/1 9R 181-352.91

approximate Cost Per Person

number of Persons in Party

FOLLOW UP

MEHL 011290 330118/120

562
 5/1/63

Results 8-1-63

NR

miss Burger

OK

198.97

723.2

356.91

(T)

Fill Out Forms In Detail

8/1 O'Hare
 Confirmed
 Bauer

allstar Hotel
 ref. #14,00
 miss Dumond

EXHIBIT D, ANNEXED TO SECOND AMENDED PETITION.

State Of New York)ss:
County Of Suffolk)

I, GENE BARRON, being duly sworn, deposes and says;

Suffolk County, New York, U.S.A.

1. That I am the Owner of Harley - Davidson Motorcycle Co, located at Route 109, Town of West Babylon, Suffolk County, New York State;
2. That in the summer of 1963, said business was located on Sunrise Highway, and as stated in the previous affidavit submitted by me, I met ALFRED ARGENTINE, at that time;
3. That in the months of July and August of 1974, I received several Telephone Calls from an individual who Identified himself as ALFRED ARGENTINE, who explained to me that he was in the Federal Court concerning his State Court Conviction for Forgery, placed against him by an individual known to me as " LEW HORTON ";
4. That Mr. Argentine, asked if I remembered being questioned in January 1964, by an Investigator from the Nassau County Public Defender's Office, about the amount of times Mr. Argentine, came to my place of business during the summer of 1963, and also if I could remember the reason why Mr. Argentine came to my place of business. I answered " Yes " to both questions.
5. That during our Telephone Conversations, I agreed to furnish any Information that I had in my possession concerning Mr. HORTON, or the individual that I knew who was using the name of " LEW HORTON ".
6. That Mr. Argentine asked me if I could remember ever receiving any " Bad Checks " from Mr. HORTON. I answered " YES ". That when Mr.

EXHIBIT D, ANNEXED TO SECOND AMENDED PETITION

Argentine asked if I could give him any particulars, I requested Mr. Argentine to give me some Twenty (20) Minutes Time to check my records, and then call me back;

7. That when Mr. Argentine called me again, I told him that I have a record showing that I had received Two (2) "Bad Checks" from HORTON during the year of 1963. That one in the amount of Ten (\$10.00) Dollars was returned on July 19, 1963 drawn on the account of "LEW'S AUTO BODY" and that the other was in the amount of FIFTY (\$50.00) DOLLARS, dated July 23, 1963;

8. That I also told Mr. Argentine that I would be most happy to give him any other Information that I could possibly furnish concerning the individual who uses the name "LEW HORTON";

Dated: October , 1974

Gene Barron
GENE BARRON G.B.

Suscribed and sworn to before me
on this 6 day of Oct, 1974

Albert J. Caruso
NOTARY PUBLIC, SUFFOLK COUNTY

ALBERT J. CARUSO
NOTARY PUBLIC STATE OF NEW YORK
NO. 30-588170
QUALIFIED IN NASSAU COUNTY
CERTIFICATE FILED IN SUFFOLK COUNTY
TERM EXPIRES MARCH 30, 1975

EXHIBIT E, ANNEXED TO SECOND AMENDED PETITION.

State Of New York)ss:
County Of Suffolk)

I GENE BARRON, being duly sworn, deposes and says:

Suffolk County Harley-Davidson Inc.

1. That I am the owner of *Harley - Davidson Motorcycle Co.*, of Route 109 West Babylon, New York;
2. That in the summer of 1963, my place of business was located on Sunrise Highway, and at that time, for Three(3) successive days, an individual came into my place of business and was very insistent on finding the whereabouts of a " LEW " MORTON;
3. That after speaking to this individual, I told him that if he caught-up to MORTON, before I did, I would appreciate it if he told MORTON that I also would like to see him;
4. That in the month of January 1964, I was interviewed by a Mr. L. ROBAU, investigator for the Nassau County Public Defender's Office. I told the Investigator that I did not know anyone named Argentini, but after the Investigator gave me a description of the Person and his Automobile, I remembered that he was the individual who had been in my place of business for Three (3) Days in succession during the summer of 1963, looking for MORTON, and that he was very insistent on finding MORTON;

EXHIBIT E, ANNEXED TO SECOND AMENDED PETITION

5. I have read the contents of this instant Affidavit and am signing the same of my own free will, without threat or promise of any reward.

Dated: OCTOBER , 1974

Gene Barin
GENE BARIN 83.

suscribed and sworn to before me

on this 6 day of November, 1974

Gene Barin

NOTARY PUBLIC, SUFFOLK COUNTY

ALBERT J. CARUSO
NOTARY PUBLIC STATE OF NEW YORK
L.I. DIVISION
QUALIFIED IN SUFFOLK COUNTY
CERTIFICATE #100-11, SUFFOLK COUNTY
TERM EXPIRE MARCH 30, 1975

EXHIBIT F, ANNEXED TO SECOND AMENDED PETITION

STEPHEN P. SAPIENZA, being duly sworn deposes and says:

1. That he is an attorney at law duly admitted to practice in the State of New York.

2. That on or about the 29th day of January, 1974, he was retained by ALFRED ARGENTINE to represent him on a Federal Writ of Habeas Corpus.

3. That during the course of his subsequent investigation and preparation of said petition, it came to his attention that a petition for a State WRIT OF HABEAS CORPUS had been heard by the Honorable Judge John S. Conable, County Court Justice, Wyoming County, during the months of June 1969 to May of 1970 and that no decision had ever been rendered.

4. That on or about February 16, 1974, your affiant did have occasion to call the Honorable Judge John S. Conable to inquire as to the present status of this matter.

5. That Judge John S. Conable indicated the transcript of certain minutes of the hearings held during the months of March and April 1970, had been lost or misplaced.

6. However, said judge indicated the original notes of the court Stenographer were still available and he would direct that they be transcribed again and a decision would be forthcoming.

7. Thereafter, on or about March 25, 1974, and again in early May, your affiant travelled to the court house located in Warsaw, New York, and did confer with Judge John S. Conable.

8. At all times said, the judge promised an expedient and favorable decision.

9. Judge Conable said his main concern was that he wanted to be certain that if Nassau County appealed his decision, it would not be overturned.

10. Although a period of over five years has expired since the state writ was issued, no decision has been rendered.

11. Therefore, your affiant in his petition before the U.S. District Court for the Eastern District of New York argued that said delays and failure on the part of the County Court to render a decision constituted an exhaustion of available state remedy.

Stephen P. Sapienza

STEPHEN P. SAPIENZA

LETTER OF A. SETH GREENWALD, DATED FEBRUARY 20, 1975. *Recd 2/21/75*

STATE OF NEW YORK

LOUIS J. LEFKOWITZ
ATTORNEY GENERAL

DEPARTMENT OF LAW

TWO WORLD TRADE CENTER
NEW YORK, N.Y. 10047

TELEPHONE: (212) 488-3396

JOEL LEWITTES
ASSISTANT ATTORNEY GENERAL
IN CHARGE OF
LITIGATION BUREAU

February 20, 1975

Re: U.S. ex rel. Argentine
v. Vincent, 74 C 193Hon. Orrin G. Judd
District Judge
United States District Court
225 Cadman Plaza East
Brooklyn, N.Y. 11201

Honorable Sir:

I am in receipt of a "Second Amended Petition" in the above application for a writ of habeas corpus. As it comes many months after the submission of this matter and from an attorney, not the attorney of record, I wish to indicate my objection at this time.

After reviewing the "new" petition it appears to be repetitive and I will rest on my prior submissions herein. The two affidavits of a Gene Barron (November 6, 1974) do not appear to add anything. However, if petitioner claims this is new evidence, then obviously he should be required to exhaust his state remedies.

Respectfully yours,

LOUIS J. LEFKOWITZ
Attorney General
By

A. SETH GREENWALD
Assistant Attorney General

ASG:jf

cc: Stephen P. Sapienza, Esq.

Reisch, Klar & Lane, P.C.



LETTER OF BURTON C. AGATA, DATED MARCH 6, 1975.

REISCH, KLAR & LANE, P.C.
ATTORNEYS AT LAW

1501 FRANKLIN AVENUE
MINEOLA, NEW YORK 11501

516-742-4949

ERIC LANE
MICHAEL N. KLAR
RICHARD J. REISCH
JOEL A. BRENNER
STUART J. FILLER
ROSS RADLEY

BURTON C. AGATA
COUNSEL

March 6, 1975

Hon. Orrin G. Judd
District Judge
United States District Court
225 Cadman Plaza East
Brooklyn, N.Y. 11201

RE: U.S. ex rel. Argentine
v. Vincent, 74 C 193

Dear Judge Judd:

With respect to the above matter, we are in receipt of a letter addressed to you by Attorney for the Respondent dated February 20, 1975. We invite your Honor's attention to our letter to you of January 10, 1975 which confirmed the extension of time to February 15th for our service of an Amended Petition.

It may well be that inadvertently a copy of that letter was not sent to the Respondent's Attorney and for this, we apologize. However, it does not appear that Respondent was in any way prejudiced thereby.

With respect to the Respondent's answer to the second Amended Petition contained in his letter of February 20, reference to his earlier submissions makes it difficult to know precisely what issues are being joined. In any event, the New York Courts have had the opportunity to consider the materials set forth in the Amended Petition and at least with respect to the proceeding in Wyoming County during the last four years, no decision has been rendered and petitioner should not be held accountable for the court's failure.

Respectfully yours,

REISCH, KLAR & LANE, P.C.
By Burton C. Agata

bca/vh
CC: Attorney General with copy of January 10th Letter

ORDER OF ORRIN G. JUDD, J. DISMISSING PETITION.

U. S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORKUNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

APR 7 - 1975

UNITED STATES OF AMERICA ex rel. :	TIME A.M.
STEPHEN P. SAPIENZA, Petitioner	P.M.
on behalf of ALFRED A. ARGENTINE, :	74-C-193
-----x	
Relator, :	M'FILMED
- against - :	
LEON J. VINCENT, Warden, Green	April 4, 1975
Haven Correctional Facility, :	
Respondent. :	-----x

Appearances:

STEPHEN P. SAPIENZA, ESQ.
 BERNARD JAY COVEN, ESQ.
 and
 REICH, KLAR & LANE, P.C.
 Attorneys for Relator

By: BURTON C. AGATA, ESQ.
 of Counsel

HON. LOUIS J. LEFKOWITZ
 Attorney General of the State
 of New York
 Attorney for Respondent

By: A. SETH GREENWALD, ESQ.
 Assistant Attorney General
 of Counsel

J U D D, J.

ORDER OF ORRIN G. JUDD, J. DISMISSING PETITION

MEMORANDUM AND ORDER

A harsh sentence for a minor felony, pursuant to New York's multiple offender law, has led to a series of post-conviction proceedings, culminating in the second amended petition for habeas corpus now before this court.

The principal contentions of the relator Argentine are (1) that he was forced to trial with counsel not of his choosing, (2) that he was prevented from calling witnesses who might have impeached the credibility of prosecution witnesses, (3) that he was not given information which might have helped impeach prosecution witnesses, (4) that prosecution witness Lewis Horton was permitted to give testimony known to be perjurious, and (5) that the possibility of a fair trial was prevented by prejudicial pre-trial publicity.

Facts

Alfred Argentine was arrested in September 1963 and indicted in Nassau County Supreme Court on October 1, 1963 on two counts of forgery, second degree, and one count of larceny, second degree. The newly created Office of the Public Defender was appointed to represent him. He pleaded

ORDER OF ORRIN G. JUDD, J. DISMISSING PETITION

not guilty on October 7, 1963. On December 16, 1963 James J. McDonough, an experienced attorney who was the head of that office, asked the court to relieve him because of plaintiff's hostility and failure to discuss the facts of the case with him. The motion was denied. It was renewed on January 6, 1974 when the case came on for trial. Argentine asserted at that time that he had arranged with an attorney named Michael J. Winters to represent him, but that Winters would require an adjournment until January 15. The request for an adjournment was denied and the trial begun. However, a mistrial was called on the following day because of an item printed in Newsday, which stated that Argentine had been arrested fifteen times on check charges, had served a year in the county jail in 1960-61, and had been arrested on a charge of assault after scuffling with a Newsday photographer at the time of his arrest on another bad check charge.

The Trial

The second trial began on January 20, 1964. Before the selection of the jury, Mr. McDonough asked again to be relieved because the defendant refused to discuss the facts with him, and Argentine asked leave to proceed pro se.

ORDER OF ORRIN G. JUDD, J. DISMISSING PETITION

He said that Mr. Winters was not in the case because his father would not pay his fee. The court, County Judge Kelly, refused to relieve Mr. McDonough, saying that he was a man of twenty years' experience and that Judge Goldstein had told him (Judge Kelly) that in another case where Argentine was a defendant, he had called two attorneys whom Argentine wanted to have represent him, and that neither of them would serve. The defendant then asked for a change of venue, although Mr. McDonough thought there was no ground. This motion was denied.

Mr. McDonough read a request by Argentine for the trial judge to disqualify himself because of his denial of the request to relieve Mr. McDonough and because he had misconstrued the conversation with Judge Goldstein. This motion was denied and the case proceeded to trial. Additional motions to relieve Mr. McDonough and let Argentine proceed pro se were denied in the course of the trial.

The charge was a simple one, that Argentine on August 1, 1963 submitted a check of Lew's Auto Body Co. for \$356.91 to Hershy Travel Agency in payment for three round-trip plane tickets to Florida. Argentine was charged with representing himself as Lewis Horton, who owned Lew's Auto

ORDER OF ORRIN G. JUDD, J. DISMISSING PETITION

Body Co., and who had not signed or authorized the check.

Mr. Horton testified for the People, that he had known Argentine for five years, that Argentine was around his body shop frequently for a few weeks before August 1, that he used to go out for coffee for Horton, that he could have had access to the Cadillac in the trunk of which Horton kept the checkbook from which the check to Hersh was taken, and that he had said about that time that he had just got back from Florida. The check was on an account which Horton had closed some time previously. Horton testified that he did not make out the check, that he did not sign it, and that he was not at the Hotel McAllister in Florida on August 1, 1963 or ever. On cross-examination, Mr. Horton admitted having been charged several times with traffic violations, and with the issuance of bad checks. He said that the bad check charges were usually disposed of by making restitution and that the only time he had served in jail was for driving a taxi cab without a valid New York license. Other convictions had been for labor law violations, for failure to pay wages. Horton admitted having used the name Charles Davis to establish credit when his own credit was not good. He denied that he had ever engaged in bookmaking. He said that

ORDER OF ORRIN G. JUDD, J. DISMISSING PETITION

seen a Mrs. Romandette several times in Argentine's car. He also said that he had introduced a woman named Milo, a beauty shop operator, to Argentine.

Jeffrey Wartenberg, an employee of Hershy Travel Agency, identified Argentine as the man who came into the agency with a check of Lew's Auto Body Co., which was already signed. Argentine filled in the payee's name and the amount with Mr. Wartenberg's pen. Wartenberg spoke with the manager, a Mr. Dreiwitz, who said it was okay to take the check if it was a local check. A man named Brunner was with Argentine in the agency office at the time. There had been a telephone call in the morning from a man who called himself Horton, so that the tickets could be made ready when Mr. Argentine came in. The records showed that the airline had reported that all three tickets were used.

Sanford Hershy testified that the Lew's Auto Body check had been returned for insufficient funds, that he did not know Argentine, and that he received a commission voucher from the Hotel McAllister in Florida for the room rent paid on a one-night stay by "Mr. and Mrs. Lewis Horton."

ORDER OF ORRIN G. JUDD, J. DISMISSING PETITION

Richard Gapin, a reservation clerk at Hershy Travel Agency, testified that he had received a telephone call during August 1, 1963 from a man who described himself as Lewis Horton, who asked for Florida tickets for himself and his wife Gladys, and left a telephone number (which turned out to be the telephone number of Mrs. Romandette). Mr. Gapin identified Argentine as the man who came into the agency later on August 1st to pick up the tickets.

Mary Romandette identified Argentine, and testified that she knew Argentine under the name Arthur Gentina. She said that she went with him to Florida on August 1st, and that they registered together that night at the McAllister Hotel and returned the next day. She had seen a third ticket, which he said was for his friend Bert, who had changed his plans and was not going with them. After they registered in Florida, Argentine told her to use the name Horton in referring to him because he was supposed to be there on business that he was doing under the name of Lewis Horton. Mrs. Romandette was married at the time and pregnant with her second child, but was not living with her husband. At one point, Mr. McDonough mentioned to the court that Argentine was suggesting many questions to him

ORDER OF ORRIN G. JUDD, J. DISMISSING PETITION

and that he was not asking them all because he thought many of them were not in Argentine's best interest.

Detective Russell Scott testified that he was experienced in handwriting analysis and that he had compared the signature on the check with that of Lewis Horton, that they did not correspond and that he determined that the signature on the check was forged.

Detective Daniel Healy testified that he had checked the registration of a Chevrolet Impala which was in Argentine's possession at the time of his arrest, and that it was registered in the name of Arthur Gentina.

Mr. McDonough on January 27 informed the court that he had located three of some seven people whom Argentine urged him to call as witnesses, and that he had subpoenaed one, who had not come to court. He again asked to be relieved so that Argentine could defend himself pro se. The motion was denied, but the court granted a day's adjournment in order to procure the presence of the witness. The witness Milo, whose real name was Mary Ann Miglioccio, was not present on January 28. Mr. McDonough made an offer of proof that she would testify that Mr. Horton had called her about Mr. Argentine, and that shortly thereafter

ORDER OF ORRIN G. JUDD, J. DISMISSING PETITION

Argentine had come to discuss setting up a bookmaking operation in her beauty parlor, which she had refused to do. Mr. McDonough mentioned that the defendant had asked him to produce Bert Solomkin, who was then in the Nassau County Jail, and Robert Brunner, who lived in Deer Park, but that he did not think the testimony of either of them would be helpful.

The defendant rested without putting in any evidence.

The jury brought in a verdict of guilty and were duly polled on all three counts.

The District Attorney thereafter filed an information charging Argentine with having been previously convicted of forgery in 1961, on a guilty plea. At the time of sentence on March 18, 1964, although a jury was present to pass on the charge of a prior felony, Argentine admitted the prior conviction. He stated that he thought it was only a misdemeanor, but the record indicated that he had pleaded guilty to the first count as a felony and the second count as a misdemeanor, and received a one-year sentence on the misdemeanor charge. Since he had been in jail for more than a year, the misdemeanor sentence had

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already been served. On March 18, 1964, the court found that Argentine was the same person convicted of a prior felony on November 15, 1961. He was sentenced to indeterminate terms of two to ten years on the first count, ten to twenty years on the second count, and two and a half to ten years on the third count, all to be served concurrently.

Post-Conviction Proceedings

A coram nobis proceeding was initiated by Argentine on September 25, 1964 and was denied without a hearing. On March 27, 1967, Argentine moved to relieve the assigned counsel in that matter and prosecute the appeal on his own behalf. The denial of the coram nobis petition was affirmed by the Appellate Division on May 29, 1967 and leave to appeal to the Court of Appeals was denied by Chief Judge Fuld on October 16, 1967.

Argentine's appeal from the conviction was dismissed by the Appellate Division on October 3, 1966, for failure to prosecute.

In 1968, Argentine brought a civil rights action in the Southern District of New York against the Warden of Wallkill State Prison for interference with his legal correspondence. After a trial in June 1968, Judge Croake

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dismissed the petition and denied leave to appeal. A subsequent motion to set aside that decision, on the ground that he was denied effective assistance of counsel and the opportunity to subpoena certain witnesses, was denied with a written opinion. Argentine v. McGinnis, 311 F. Supp. 134 (S.D.N.Y. 1969).

A pro se application in the nature of coram nobis before Judge Kelly was denied on December 31, 1969 with an opinion. Judge Kelly stated that Argentine had been afforded ample opportunity to retain counsel of his own choosing, that his motion on the eve of trial would have resulted in an unreasonable delay, and that the court would not review the failure of Legal Aid counsel to call particular witnesses unless the result was that the trial was a farce and a mockery of justice, citing People v. Brown, 7 N.Y.2d 359, 361, 197 N.Y.S.2d 705, 707 (1960). He held that this was not true of counsel's actions in this case.

On June 9, 1969, Argentine initiated a habeas corpus proceeding in the Supreme Court, Wyoming County, before Mr. Justice Conable. Hearings were completed in this proceeding on April 13, 1970. The court reserved decision, and has not yet made any decision. Stephen

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Sapienza, Argentine's original attorney in this proceeding, visited Judge Conable twice in early 1974 and was promised that the case would be decided promptly. It may be that Judge Conable's files in the case have been mislaid.

Hearings on another coram nobis proceeding were begun before Judge Gibbons of the Nassau County Supreme Court on March 29, 1971, following the Appellate Division's reversal of Judge Kelly's previous denial of a writ. Argentine was represented by assigned counsel. The minutes of this proceeding total 405 pages.

Judge Gibbons wrote a 12-page memorandum in disposing of the case. Defendant was at large at the time and able to assist in the hearing, having been paroled in 1970. In his opinion dated July 8, 1971, Judge Gibbons found that the defendant had hired and discharged three attorneys in connection with the Hershy Travel case and another indictment, and that five others had refused to represent him. As for the claim that Mr. Winters had been paid a legal fee prior to the time when the court refused an adjournment of the January 6th trial, the court found "that this claim by the defendant is completely false and is injected merely to confound and confuse the issues herein." The court further

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found that the defendant was indigent and had no funds nor any funds available to him to hire counsel at the time of the trial. The court found that the stenographic minutes were true and correct, except for one page of the record before Judge Goldstein, which was not in proper numerical sequence. With respect to Argentine's claim that he had been deprived of access to counsel, the court listed nine attorneys who had visited Argentine at the Nassau County Jail, and found that Mr. McDonough had visited him on November 19 and December 19, 1963, and January 24, 1964. In addition, Argentine's father visited him on 14 separate occasions.

Argentine had asserted before Judge Gibbons that he should not have been sentenced as a second felony offender because he did not know that he had pleaded to a felony in 1961; he charged that his then attorney, who is now a judge of the Nassau County Family Court, falsely represented to him that he was pleading merely to a misdemeanor. Judge Gibbons found this claim to be false, on the basis of Argentine's admission before Judge Goldstein on December 16, 1963 that "I have only one felony for forgery and the rest are petty larcenies." Finally, Judge Gibbons ruled:

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After considering all of the credible evidence received during the hearing herein, it is the court's determination that the defendant embarked upon a calculated effort to delay, frustrate and prevent the trial both upon indictment number 18690 before Judge Goldstein and upon indictment number 19147, before Judge Kelly.

It is also the determination of this court that the defendant at no time prior to the said trials, was in a financial position to pay the necessary legal fee to retain a lawyer, and further, that neither his parents nor his former associate, nor his former wife, were ready with the available funds and inclined to make such advance. These facts were known to the defendant, and, notwithstanding, he persisted in his claim for counsel of his own choice, merely as a ploy to delay and frustrate the beginning of the trials.

The following is a summary of the testimony adduced by Argentine's assigned counsel at the coram nobis hearing before Judge Gibbons.

Judge Aaron Goldstein, a New York City Criminal Court Judge assigned to sit in Nassau County Court, stated that Argentine had requested representation by several lawyers, that the court contacted them and that none of them wanted to represent him, and that the court spoke on the telephone with Argentine's mother, who said that her father was sick and she could not pay any lawyer. Mr. McNamee of

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the Public Defender Unit, testified that Argentine wanted him to be relieved of his representation before the trial, and that Argentine did not give him the names of potential witnesses until just before the trial. Detective Lieutenant Joseph Kelly testified, but gave no evidence material to the issue. Evelyn Shanser, a court reporter, testified concerning the minutes of the proceeding before Judge Goldstein and asserted that they were accurate.

Dorothy Matera testified that she was Argentine's wife at the time of the trial, and that she would have provided funds for his defense, but that no one ever asked for her help. However, she admitted that she and Argentine had been separated from at least August 1963, and that she did not know where he was during the balance of the year.

Judge Paul Kelly testified that he had no recollection of ever having represented Argentine, and that he would have disqualified himself if he had so recalled in 1964. Counsel for Mr. Argentine produced the record of a jail visit to him by a Paul Kelly on August 31, 1961. The District Attorney suggested that this might have been a visit about possible representation which did not materialize.

Mr. Argentine testified that on January 5, 1964,

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his father had paid Mr. Winters \$1,500, which was later returned. No receipt or other confirmation of this was provided, and no one called Mr. Winters. The examination and cross-examination of Mr. Argentine occupied about 297 pages of minutes. Nowhere in his testimony was there any explanation of his actions on August 1, 1963.

Lietenant Robert Macho was called by the District Attorney and produced records of visits at the Nassau County Jail. These included visits by Argentine's father and by various lawyers, including one visit by Mr. Winters on December 30, 1963, and a visit by a Mr. Friedler on January 3, 1964.

There is no record of any appeal having been taken from Judge Gibbons' decision.

In 1973, Argentine brought a pro se motion to vacate the judgment of conviction on the ground that material false evidence was adduced at the trial with the knowledge of the prosecutor. The alleged false evidence related to prior convictions of Lewis Horton. The new evidence consisted of a 1970 report of the New York State Identification and Intelligence System concerning Horton's fingerprint record. It began with a 1952 jail sentence of 120 days for

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petit larceny. It included two convictions under the name "Lewis Horton Lippens" in 1958 for violations of the Vehicle and Traffic Law, which had resulted in sentences of 110 days imprisonment and \$310 fines. It included a 1960 suspended sentence for a fraudulent check, conditioned on restitution, a similar conviction and suspension of sentence for a fraudulent check in 1962, and a sentence of three days or \$15.00 in 1960 for failing to signal a right turn, and a conviction and suspended sentence for bigamy in 1965. It also showed five other convictions between 1964 and 1968 and four open charges, several of the recent ones being under the name Lewis Simms. The last charge resulted in a sentence of three and one-half to four and one-half years for possession of dangerous weapons.

Judge Altimari denied Argentine's motion to vacate the conviction in a three-page memorandum, dated October 10, 1973, which pointed out that Horton had admitted at the trial to several arrests and convictions, to having spent time in jail, and to having used an alias. The judge also stated,

Inasmuch as substantial evidence of a prior criminal record and the use of aliases had been introduced at trial,

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proof of the twelve year old misdemeanor conviction and use of the alias "Lippens" would be merely cumulative and not material or likely to produce a more favorable verdict for petitioner. (People v. Salemi, 309 N.Y. 208, 226; People v. O'Connor, 37 Misc. Rep. 754).

The petitioner has failed to allege facts tending to show that the prosecutor knew or should have known of the prior misdemeanor conviction.

The Proceeding Before the Court

The present habeas corpus proceeding began with the filing on February 5, 1974 of the petition of Stephen P. Sapienza as attorney for Argentine for a writ of habeas corpus directed to the Warden of the Green Haven Correctional Facility. The court issued an order to show cause directed to the New York Attorney General and set February 22, 1974 as a time for oral argument on the petition and the Attorney General's return. After interim adjournments, the case was argued on March 29, 1974. The Attorney General's opposing affidavit, filed March 11, 1974, simply referred to the pendency of a proceeding in Wyoming County as showing failure to exhaust state remedies and called attention to the absence of copies of the state court papers. There followed an amended petition filed April 25, 1974, to which

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were appended 13 exhibits, including one of Argentine's communications to Judge Kelly, a copy of the report of Mr. McDonough's investigator, copies of the decisions of Judge Altimari and Judge Gibbons, the 1970 fingerprint report on Mr. Horton, and various other documents. The Attorney General filed a supplemental affidavit on June 28, 1974, after receipt and review of the trial transcripts. In view of this court's delay in making an independent review of the papers, Mr. Sapienza filed a 17-page "Application for Bail Pending Final Disposition of Writ of Habeas Corpus," which was set for argument on July 26, 1974 and was met by an affidavit in opposition, in which the Attorney General asserted that the power to grant bail pending an application for a writ of habeas corpus should be most sparingly exercised.

After the court's return from vacation recess, Argentine announced that he wanted new counsel to file amended papers, and a substitution of Bernard Jay Coven as attorney was filed on September 11, 1974. Argentine was brought down from Attica and lodged in West Street in order to consult with his attorneys. On December 29, 1974 he wrote to Mr. Coven complaining of his alleged dilatory

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tactics and of his having lied to Mr. Argentine's wife that he would have him out in two weeks.

Thereafter, without a formal substitution, the firm of Reich, Klar & Lane, P.C. undertook Argentine's representation, with the assistance of Burton C. Agata, who filed a "Second Amended Petition" on February 18, 1975. While this petition was well organized and clearly presented, it contained basically the same material which had been previously brought before the court.

Meanwhile, Argentine had supplied to the court three affidavits, one by a Gene Barron, owner of a motorcycle agency, who asserted that Mr. Horton had issued two bad checks aggregating \$60.00 to him during the summer of 1963; another by Mr. Sapienza describing his visits to Judge Conable in Warsaw, New York, and the judge's promise of "an expedient and favorable decision"; and another affidavit by Mr. Barron stating that he had told Mr. McDonough's investigator of Argentine having come to his place of business during the summer of 1963 looking for Mr. Horton.

The Legal Aid Investigator

Mr. McDonough's investigator visited four witnesses • on Friday and Saturday, January 24 and 25, 1964, and

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submitted a written report, which is part of the record in this proceeding.

Martin Dreiwitz, manager of the Hershy Travel Agency, said that he did not know Argentine, did not authorize the cashing of the check, that Mr. Wartenberg, who waited on Argentine, did not have travel agency experience before, and has since left Hershy. Mr. Dreiwitz also said that if he showed any recognition to Argentine or said hello, "This was merely in his capacity as a salesman . . . to greet and be pleasant to prospective clients."

Gene Barron said that he knew Horton, who had done some painting for him on motorcycles, that he did not know Argentine, but from the description of him and his car, he recalled that Argentine came three successive days in the summer very insistent on finding Horton. Milo (MaryAnn Miglicci) told the investigator that she had owned a beauty parlor in Islip Terrace, that Lew Horton called to prepare the way for Argentine's coming to see her in regard to making book, but that she never entered into any agreement. She said that Argentine used to hang out in Horton's collision shop somewhere in Lindenhurst, and "she was aware that Horton and he did business together," but could not state

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that it was bookmaking, although Argentine stated that he was doing bookmaking with Lew Horton.

Discussion

Argentine's abandonment of his appeal from the conviction, and his failure to appeal from the determinations of Judges Kelly, Altimari, and Gibbons denying earlier petitions for coram nobis, might well support a dismissal of this action for failure to exhaust state remedies. 28 U.S.C. § 2254(b). However, the five-year delay in obtaining a decision from Mr. Justice Conable in the Wyoming County proceeding persuades the court that further state court proceedings would be ineffective.

On the merits, no legal reason appears for interfering with Argentine's present state custody, although both Mr. Sapienza and Professor Agata are entitled to commendation for their diligent and workmanlike efforts on his behalf.

The determination of the factual issues by Judge Altimari, after what appears to be a full and fair hearing, meets the requirements of 28 U.S.C. § 2254(d) and the court finds no reason to consider that Judge Gibbons' factual determinations were erroneous or that any additional

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evidence need be taken.

With respect to Argentine's right to counsel of his own choice, it appears that he had no funds of his own or available to him for the retention of counsel, that Mr. McDonough represented him competently under difficult circumstances, and that the court was correct in not relieving Mr. McDonough and leaving Argentine to defend himself pro se. It may be noted that there is no evidentiary support for the assertion in paragraph 5(i) of the second amended petition that stories about Argentine continued to appear in newspapers, radio, and news broadcasts after January 7, 1964.

With respect to the claim of "denial of compulsory process," the investigator's report of interviews with the prospective witnesses disclosed at best minor contradictions of prosecution witnesses on collateral points. At the same time, they might have tied Argentine into a bookmaking operation, which was not a sympathetic presentation to a jury. Mr. McDonough's determination not to call them was a reasonable one and did not deprive Argentine of a fair trial.

With respect to the alleged denial of the right of confrontation, Judge Goldstein's testimony at the coram nobis

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proceeding confirmed what Judge Kelly had stated at the time of the trial concerning the unwillingness of counsel to represent Argentine. The proof that Lewis Horton had another alias and another misdemeanor conviction, would have been merely cumulative and does not constitute any constitutional defect in Argentine's trial. The fact that the name "Al Gentina" was on the middle of the Hershy Travel Agency inquiry form may perhaps have justified some argument to the jury, but the travel form was made out to Mr. and Mrs. Lewis Horton (Gladys), and to R. Brunner.

With respect to the alleged use of perjured testimony, Mr. Horton's testimony concerning the number of his arrests and the disposition of each one, even if material, has not been shown to be the result of deliberate concealment of facts known to the District Attorney.

This court would not have imposed a sentence of ten years for the issuance of a bad check for \$356, even on a second offender. The twenty year maximum seems to be substantially more than required under old New York Penal Law § 1941(1). However, the federal court's functions do not include the review of state court sentences. Even the sentence of a United States District Judge, within the

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maximum permitted by law, is not reviewable on appeal.

United States v. Tramunti, F.2d (2d Cir. March 7, 1975).

Possible Alternative Relief

The dismissal of Argentine's appeal from his original conviction took place before the United States Supreme Court decided that counsel cannot abandon an appeal without submitting a brief to aid the court in determining whether all possible arguments for reversal are frivolous.

Cf. Anders v. State of California, 386 U.S. 738, 87 S.Ct. 1396 (1967).

The question remains open whether dismissal of Argentine's appeal, without any determination that it was frivolous, was a denial of due process. This point appears not to have been presented to the state courts. Therefore, under 28 U.S.C. § 2254(b), Argentine must start again on this issue, if he wishes to pursue it.

Even if the proof of guilt was overwhelming, state courts may modify the length of sentence on appeal. Indeed, in New York an appeal of a sentence may be based on the fact that it is "harsh." N.Y. Crim. Fr. Law § 430.50.

One of the reasons this court has recited the

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chronology and facts of Argentine's trial and subsequent proceedings in some detail is to provide a guide through the long record for any state court which upon proper application may feel it appropriate to modify the original sentence.

It is ORDERED that the petition be dismissed.

U. S. D. C.

JUDGMENT.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Loyd

- - - - - X	:	
UNITED STATES OF AMERICA ex rel.	:	
STEPHEN P. SAPIENZA, Petitioner	:	
on behalf of ALFRED A. ARGENTINE,	:	
Relator,	:	JUDGMENT
-against-	:	74-C-193
LEON J. VINCENT, Warden, Green	:	
Haven Correctional Facility,	:	
Respondent.	:	M'FILMED
- - - - - X	:	

ED
CLERK'S OFFICE
DISTRICT COURT E.D. N.Y.

APR 10 1975 ★

A memorandum and order of the Honorable TIME AM.....
P.M.
Orrin G. Judd, United States District Judge, having been
filed on April 7, 1975, dismissing the petition, it is
ORDERED and ADJUDGED that the relator Alfred A.
Argentine take nothing of the respondent and that the
petition is dismissed.

Lewis Orgel
Clerk of Court

Dated: Brooklyn, N.Y.
April 10, 1975

